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No jurisdiction because
no allowance of appeal. 22

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 209.

JAMES D. BENNETT AND SETH TURNER, APPELLANTS,

vs.

FINLEY F. FOWLER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 10, 1867.

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1 Pleas in the Circuit Court of the United States of America for the northern district of Illinois, sitting in chancery, at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said Circuit Court, on Wednesday, the nineteenth day of June, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-first year.

WILLIAM H. BRADLEY, *Clerk.*

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } Chancery.

2 *Northern District of Illinois, ss:*

Be it remembered: That on the twenty-fourth day of June, in the year of our Lord one thousand eight hundred and sixty-five, came Finley F. Fowler, complainant, by Goodwin, Larned & Goodwin, his solicitors, and filed in the office of the clerk of the Circuit Court of the United States for the northern district of Illinois, at Chicago, in said district, his bill of complaint against James D. Bennett, Seth Turner and Gilbert Wyman, defendants, and also at the same time filed in the said clerk's office his bond for costs in the said entitled cause, which said bill of complaint and bond are in the words and figures following, to wit:

Bill of complaint.

To the judges of the Circuit Court of the United States for the northern district of Illinois, sitting in chancery:

Finley F. Fowler, of Upper Sandusky, in the State of Ohio, and a citizen of the State of Ohio, brings this his bill against James
3 D. Bennett, Seth Turner, and Gilbert Wyman, doing business at Onarga, Iroquois county, in the State of Illinois, under the firm name and style of Bennett, Turner & Co., citizens of the State of Illinois; and thereupon your orator, complaining, says and shows unto your honors, that heretofore and on the seventeenth day of April, in the year of our Lord one thousand eight hundred and sixty, your orator, being then and now a citizen of the United States of America, was the original and first inventor of a certain new and useful improvement in hay elevators in certain letters patent of the United States hereinafter first mentioned, set forth and described; that the said invention was not at the time of your orator's application for a patent, as hereinafter first mentioned, in public use or on sale with your orator's consent or allowance; that your orator being such original and first inventor of said improvement, as before mentioned, and being a citizen of the United States; made application in due form of law to the Commissioner of Patents of the United States

for the grant of letters patent for said improvement, and was duly sworn to the specifications for that purpose; and your orator having complied with all the conditions and requirements of the acts
4 of Congress in such case provided, did, on the same seventeenth day of April, in the year one thousand eight hundred and sixty, obtain, and there was issued and delivered to your orator, certain letters patent of the United States therefor in due form of law, under the seal of the Patent Office of the United States, duly signed by the Secretary of the Interior of the United States, and countersigned and sealed by the Commissioner of Patents of the United States, bearing date the same day and year last aforesaid, whereby there was secured to your orator, his heirs, administrators, or assigns, for the term of fourteen years from and after the date of the said letters patent, the full and exclusive right and liberty of making, constructing and using, and vending to others to be used, the said improvement in said letters patent mentioned and referred to; that a legal description of said improvement was given in the words of your orator, the said patentee himself, in a certain schedule in writing which was accompanied by drawings and written references in due form of law annexed to the said letters patent last mentioned when the same were issued, and which schedule made a part of the said last-mentioned letters patent, as by a certified copy of said last mentioned letters patent and schedule annexed in due form of
5 law, ready now here in court to be produced, reference being thereto had for greater certainty, will more fully and at large appear.

And your orator further shows unto your honors, that afterwards and on the ninth day of September, in the year of our Lord one thousand eight hundred and sixty-two, your orator did make at Washington a formal surrender of said original letters patent last mentioned, in conformity with the law in such cases provided, for the purpose of obtaining a new patent to be issued for the same invention upon a corrected and amended description and specification accompanied with drawings and figures of the said machine, describing the said invention and pointing out in what it consisted in more clear full and exact terms than was done in the original specifiations; whereupon at the city of Washington, on the said ninth day of September, in the year one thousand eight hundred and sixty-two the said first-mentioned letters patent were legally cancelled and a new patent for the same invention was made, issued and granted from the Patent Office of the said United States, in due form of law, upon said corrected description and specification and explanatory drawings, and delivered to your orator, which said new and reissued letters patent, granted to your orator for the said improve-
6 ment and invention before mentioned, were issued under the seal of the Patent Office of the United States, duly signed by the Secretary of the Interior of the said United States, and countersigned and sealed by the Commissioner of Patents of the said United States, bearing date the said ninth day of September, in the year one thousand eight hundred and sixty-two, whereby there was secured

to your orator, his heirs, administrators or assigns, for the term of fourteen years from the said seventeenth day of April, in the year one thousand eight hundred and sixty, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement in said reissued letters patent described; that a legal, corrected and amended description and specification of said improvement was given in the words of your orator himself in a certain schedule, which was accompanied by drawings and written references in due form of law annexed to said new and reissued letters patent when the same were issued, and which said last-mentioned schedule made a part of the said new and re-issued letters patent, as by a certified copy of said last-mentioned new and reissued letters patent and schedule annexed in due form of law, now here in
7 court ready to be produced, reference thereto being had for greater certainty will more fully and at large appear.

And your orator further shows unto your honors, that afterwards, and on the fourteenth day of February, in the year one thousand eight hundred and sixty-five, your orator did make at Washington a formal surrender of said last-mentioned new and reissued letters patent, in conformity with the law in such cases provided, for the purpose of obtaining further new patents to be issued for the same invention, upon the several corrected and amended descriptions, and accompanied with drawings and written references of said machine describing the said invention, and pointing out in what it consists in more full, clear, and exact terms than was done in said corrected and amended description and specification annexed to said last-mentioned new and reissued letters patent; whereupon, at the city of Washington, on the said fourteenth day of February, in the year one thousand eight hundred and sixty-five, the said above-mentioned new and reissued letters patent were legally cancelled, and two several new patents, each one for a substantial and material part of the same invention aforesaid, and for a distinct and separate
8 part of the thing patented, were issued, and granted, and delivered, from the Patent Office of the United States, to your orator in due form of law, upon said two several corrected and amended specifications, descriptions, and drawings; that said two several reissued letters patent were respectfully marked reissue No. 1869, and reissue No. 1870, and were each one issued under the seal of the Patent Office of the United States, and duly signed by the Secretary of the Interior of the United States, and countersigned and sealed by the Commissioner of Patents of the United States, and each bear date on the fourteenth day of February, in the year one thousand eight hundred and sixty-five; and that there was, by each of said two reissued letters patent, secured to your orator, his heirs, administrators, or assigns, for the term of fourteen years from the said seventeenth day of April, in the year one thousand eight hundred and sixty, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the whole material and substantial part of said original improvement and invention above first mentioned, contained separately in each of said

two reissued letters patent, numbered reissue 1869 and 1870,
9 and in each of them described and set forth; that a legal corrected and amended description and substantial part of said original improvement and invention, contained in each of said two reissued letters patent, was given in the words of your orator himself in a certain schedule, which was accompanied by drawings and written references in due form of law annexed to each of said two reissued letters patent, numbered 1869 and 1870, at the time the same were issued, and which said last-mentioned schedule made a part of each one of said last-mentioned reissued letters patent, as by the said last-mentioned two reissued letters patent, signed and sealed as aforesaid, now brought here into court and ready to be produced as this honorable court shall direct, (copies of which, without the drawings, forming part of the same, are hereto annexed, marked schedules A and B, forming part of this bill of complaint,) reference being thereto had, will more fully and at large appear.

And your orator further shows unto your honors, that the said several separate improvements and inventions contained in the several reissued letters patent above set forth, and marked Nos.
1869 and 1870, constitute separate parts or features of an
10 entire machine for elevating and stacking hay, and may be constructed for use, and use as one machine in that department of agriculture.

And your orator further shows unto your honors, that since the granting of said letters patent, and since the granting to your orator of the said new and reissued letters patent last mentioned, your orator and those claiming under him by assignment, license, or otherwise, have manufactured and sold large numbers of machines in different parts of the country, containing the said improvements and inventions aforesaid, and the same have been extensively used in the department of agriculture to which they belong, to the great saving of labor, and to the great benefit of the public, whereby your orator might and would have derived greater profit to himself than he has been able to realize, but for the combined and illegal interference with the just exercise of your orator's rights as secured to him by the several reissued letters patent last aforesaid hereinafter mentioned; and that your orator is now still in the exclusive possession and enjoyment of the said inventions respectively.

11 And your orator further shows unto your honors, that the validity of your orator's said patents and your orator's exclusive right to the privilege and monopoly of the said several inventions have become fully settled and established by your orator's long and extensive use of the same, and the acquiescense of the public therein, by the purchase and use of a large number of your orator's machines, and by the acceptance of grants and licenses under your orator, so that your orator's title to the said improvements and inventions, secured to your orator by the said several reissued letters patent last mentioned, and your orator's exclusive rights therein, remain without reasonable question.

And your orator further shows unto your honors, that your orator

is informed and believes that since the said fourteenth day of February, in the year one thousand eight hundred and sixty-five, and at divers times and occasions between that time and the filing of this your orator's bill of complaint, the defendants herein, James D. Bennett, Seth Turner, and Gilbert Wyman, individually, and as partners acting and doing business under the firm, name, and style
12 of Bennett, Turner & Co., at Onarga, in the county of Iroquois, in the northern district of Illinois, and at Urbana, in the county of Champaign, in said district, and at divers other towns and places in the northern district of Illinois, well knowing the facts aforesaid, and without any legal assignment, grant, or license therefor, and in violation and defiance of your orator's patent rights aforesaid, have made, constructed, and sold, and have made and kept for sale, and have made and sent out of the said district, and caused to be sold, and have made and vended to others to be used, a machine or machines (and your orator is informed a large number of machines) substantially like and upon the plan and principle, and in imitation of, and embracing the invention and improvement of your orator contained in said last-mentioned reissued letters patent, numbered 1869 and 1870; and that the said defendants are now selling, and vending to others to be used or sold, the said machines at their place of business and elsewhere within the said northern district of Illinois, and persist in so doing, and refuse to desist though warned and requested so to do, whereby great injury has resulted to your
13 orator, and great gains and profits, to a large sum of money, have accrued to the said defendants from the sale of your orator's exclusive rights, the full amount of which said gains and profits, thus unlawfully derived, is unknown to your orator, but which your orator shows belong in equity to your orator and should be accounted for by said defendants, and paid over to your orator as the avails of his exclusive patent rights aforesaid, and profits, and gains, which your orator would have derived from his exclusive patent rights but for the unlawful acts of said defendants.

And your orator well hoped that the said defendants would have desisted from their said illegal invasion of your orator's said exclusive patent rights and would have accounted for and paid over to your orator the avails of his said patent rights and the gains and profits by the defendants, thus unlawfully derived.

But now so it is, may it please your honors, that the said defendants combining and confederating together, to and with divers other persons, as yet to your orator unknown, (but whose names when discovered your orator prays may be inserted herein as defendants with
14 proper and apt words to charge them,) how to injure and oppress your orator, wholly refuse to desist from their said unlawful invasion of your orator's exclusive patent rights aforesaid, or to account for and pay over to your orator their said unlawfully derived gains and profits aforesaid; and for excuse therefor the said confederates sometimes give out and pretend that the said inventions of your orator were not new and useful, and that your orator was not the original and first inventor of the said several inventions and improve-

ments so patented to him as aforesaid, and sometimes that they the said defendants have lawful right by virtue of some patent from the United States or as public property, to use the same.

Whereas your orator expressly charges the contrary of all such pretences to be true.

All of which actings and doings of the said defendants and their confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the
15 common law, and can have adequate relief only in a Court of Equity where matters of this sort are properly cognizable and relievable.

To the end, therefore, that the said defendants may if they can show why your orator should not have the releif hereby prayed, and may, (but not upon oath, the necessity of an answer upon oath being hereby expressly waived,) according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct and perfect answer make to all and singular the matters and charges aforesaid, and that as fully as if the same were here again repeated, and they interrogated thereto paragraph by paragraph numerically, and that the said defendants may be compelled by the decree of this honorable court to account for and pay over to your orator such gains and profits as have accrued or arisen from the use, appropriation, and invasion of your orator's patent rights as aforesaid, and the avails to the defendants from the sale of your orator's exclusive rights aforesaid, and being the profits and
16 avails which your orator would have derived from the use and sale of his invention aforesaid, but for the unlawful acts of the said defendants; and that the said defendants and their attorneys, agents, servants, and workmen, may be perpetually enjoined and restrained by the decree and injunction of this honorable court from making, using, constructing or selling, or making or keeping for sale, or vending to others to be used, any machine or machines containing the improvements and inventions of your orator above set forth, or any or either of said inventions and improvements, or for such other and further relief in the premises, or either or both, as to the oourt may seem meet, or as your orator's case may require.

May it please your honors the premises considered, to grant unto your orator the people's most gracious writ of injunction, issuing out of and under the seal of this honorable court, enjoining and restraining the said defendants, as in the prayer of this orator's bill set forth, until the further order of this court.

May it please your honors also to grant to your orator the peo-
17 ple's most gracious writ of subpœna issuing out and under the seal of this court, directed to the said defendants above named, thereby commanding them and each of them by a certain day and under a certain penalty to be and appear in this honorable court to answer this your orator's bill of complaint, and to stand to, abide by

and perform such decree as the court shall make in the premises, and shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

F. F. FOWLER.

GOODWIN, LARNED & GOODWIN,

Solicitors and of Counsel for Com't.

UNITED STATES OF AMERICA, *Northern District of Ohio, ss:*

Finley F. Fowler, being duly sworn, says that he has read the foregoing bill of complaint signed by him; that he knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are therein stated upon information and belief,
18 and as to such matters he believes the same to be true.

And the said Finley F. Fowler further says, that he does verily believe that he was and is the original and first inventor of each and every of the inventions and improvements described and claimed in the schedules in said bill named, as annexed to the new or reissued letters patent in said bill mentioned as granted to him on the fourteenth day of February, 1865, for an improvement in hay elevators.

F. F. FOWLER.

Subscribed and sworn to, this 22d day of June, A. D. 1865, before me.

[SEAL.] T. E. GASSELL, *Notary Public.*

19 *Schedule A.—Reissue No.* 1869.

The United States of America to all to whom these letters patent shall come:

Whereas F. F. Fowler, of Crane township, Ohio, has alleged that he has invented a new and useful improvement in hay elevators, (for which letters patent were issued to him dated April 17, 1860; the same surrendered, and new letters ordered to issue to him dated September 9, 1862, which last letters having been surrendered, the same have been cancelled, and new letters ordered to issue to him on two separate amended specifications,) which, he states, has not been known or used before his application, has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a peti-
20 tion to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are, therefore, to grant, according to law, to the said F. F. Fowler, his heirs, administrators, or assigns, for the term of fourteen from the seventeenth day of April, one thousand eight hundred and sixty, the full and exclusive right and liberty of making, con-

structing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said F. F. Fowler in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed. Given under my hand, at the city of Washington, this fourteenth day of February, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United
21 States of America the eighty-ninth.

[SEAL.]

J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

D. P. HOLLOWAY,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that I, F. F. Fowler, of Crane township, county of Wyandotte, State of Ohio, have invented certain new and useful improvements in elevating hay or other similar products; and I do hereby declare that the following is a full, clear, and exact description of that part of my invention relating to division No. 1, reference being had to the accompanying drawings making a part of this specification, in which figure 1 represents a perspective view of the machine in use.

To make a hay elevator so simple and perfect as to become
22 a regular agricultural implement, requires much skill and invention. In the first place it must be cheap and simple; and, secondly, it must be portable, easily placed and staunch, to endure the work, without the use of guys or stays, that have to be set, arranged, or fastened; and, thirdly, the base of the elevator must not be so broad or long as to interfere with its being brought up close to its work. The object of my invention is to embrace all these desirable qualities in one apparatus, and this I believe I have effectually done.

My invention consists, first, in the combination of the permanent, pyramidal, supporting frame, and the revolving or turning cross-bar, and its braces, with a central supporting piece for steadying and allowing said cross-bar and its braces to turn freely upon the supporting frame.

And it further consists in combining with said cross-bar, revolving upon an under supporting frame, the so arranging of the hoisting tackle that the weight to be raised shall be upon one end of the cross-bar, whilst the power to raise it is applied to the opposite
23 end of this bar, so that a small structure may be used that can be conveniently transported or moved, that will occupy

but little space, and that will be sufficiently staunch without the addition of guys or braces, which require fastening or adjusting.

And it further consists in the construction of elevators for hay, of two pyramidal frames, one placed upon the other, the under frame being upright and the upper one inverted, the apices of both being so united that the upper frame may freely turn upon, whilst it is supported by, the lower frame.

To enable others skilled in the art to make and use my invention, I will describe its construction and operation:

If the base A of the elevator could be made large enough, the structure would stand without liability to topple over; or if guys or extra braces were used the structure could be made rigid by them; but a large base prevents the machine from being rapidly and closely moved up to its work, and also prevents the hay from being brought up close to the machine, so that feature is quite objectionable. To use extra guys or braces from the top of the structure would
24 not only interfere with the free turning of the cross-bar, but the trouble of fastening and unfastening them every time the structure had to be moved would prevent the general use of the machine.

To get, therefore, a small base, and obviate the use of guys or braces, I so rig the hoisting tackle as to make it subserve the purpose of guys or braces, and so equalize the load upon the structure as to make it abundantly rigid without any other support than its permanent support on the base A.

From the base A rise braces B, which point to a common centre, their upper ends being fastened into or secured to a head-block C; and a post D, centrally placed between the braces, may rise up to or through said head-block, which post may be additionally braced, as at E E. These pieces B C, D E, and F, together form a pyramidal frame, supported by, and resting upon, the base A.

G is a cross-bar projecting both ways from the central support or post D, and sufficiently far to admit the hay being easily caught upon the fork and raised up, or transferred to the stack. From
25 this cross-bar braces H H incline inward to, and are secured to a head-block I, that rests upon the head-block C, or upon a shoulder formed upon the central support D, or partially upon both, but so that the cross-bar and its braces may freely turn thereon when necessary to do so. The pieces G, H H, and I, form a second pyramidal frame, but inverted, and its apex I rests upon or is so connected with the apex C of the lower pyramidal frame, through the central support D, as to allow the upper frame to freely turn on, whilst it is supported and guided by the lever frame.

Sheaves *a a* are placed in or on the ends of the cross-bar G, over which the rope *b* is reefed, one end of said rope passing around a sheave *c* in a block *d*, that is hooked to the base A at any convenient point; and to this end of the rope the team or power to raise the hay and turn the same around is connected or attached. The other end of the rope *b* is connected by chains or ropes *e* to a fork *f*, having a series of prongs or teeth *g* slightly curved, upon which the hay to be elevated is supported. To the hand *h* of the fork a line *a'*

26 is attached, which the attendant holds in his hands, under suitable restraint, until the hay is to be dropped from the fork, when he releases or lets go the line *i*, and the fork will then draw out of the hay or other thing being stacked or housed.

By thus suspending the weight to be raised at one end of the cross-bar, and applying the power to raise that weight at the opposite end of this cross-bar, the tendency of either to topple over the hoisting apparatus is counteracted by the other, the weight and the power being about equal. Any tendency of the cross-bar G to overbalance is taken by the brace on that side, by the head-block I, or to the central supporting post, where it is counteracted, and thus by a comparatively small base and without fastening the apparatus to the ground by guys, braces, or anchors, it is sufficiently rigid and firm to resist any overturning, whilst from its lightness and portability it is with ease moved from place to place as may be required. The strength of the under frame is concentrated in its head-block or apex C. The tendency of the cross-beam G to overbalance is sustained by its head-block or apex I, and thus both the strength and the strain come
27 upon each other at a central point, where it is easily poised or disseminated.

The machine may be mounted on wheels or runners for the purpose of easily moving it from one place to another, and two or more stacks may be built without changing its position, as the cross-beam can be swung around a full circle, and take up and deliver the hay at any point within its circuit of motion.

Having thus fully described the nature and object of my invention, what I claim as new and desire to secure by letters patent is—

1st. In the construction of elevators for hay, the combination of the permanent pyramidal supporting frame, and the revolving cross-bar and its braces with a central supporting piece for allowing the cross-bar and its braces to turn upon the supporting frame, substantially in the manner and for the purpose described.

2nd. In the construction of elevators for hay, I claim in combination with the cross-bar revolving upon an under supporting frame, the so arranging of the sheaves and hoisting tackle that the
28 weight to be raised shall be upon one end of the cross-bar, whilst the power to raise that weight is applied to the opposite end of the cross-bar, for the purpose of enabling me to use a small and compact structure that may be easily transported or moved, occupying but little space, and sufficiently rigid within itself without the use of additional guys, braces, or other fastenings, as herein described.

3rd. In the construction of elevators for hay, I also claim two pyramidal frames, one placed upon the other, the under frame being upright and the upper one inverted, and the head blocks or apices of both so united as that the upper frame may freely turn upon, whilst it is supported by the lower frame, substantially as described.

F. F. FOWLER.

Witnesses:
M. H. KIRBY.
A. W. BRINKERHOFF.

29 *Schedule B.—Reissue No.* 1870.

The United States of America to all to whom these letters patent shall come:

Whereas F. F. Fowler, of Crane township, Ohio, has alleged that he has invented a new and useful improvement in hay elevators, (for which letters patent were issued to him dated April 17, 1860, the same surrendered, and new letters ordered to issue to him dated September 9, 1862, which last letters having been surrendered, the same have been cancelled, and new letters ordered to issue to him on two separate amended specifications,) which he states has not been known or used before his application, has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclu-
30 sive property in the said improvement and praying that a patent may be granted for that purpose:

These are therefore to grant according to law to the said F. F. Fowler, his heirs, administrators, or assigns, for the term of fourteen years from the seventeenth day of April, one thousand eight hundred and sixty, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said improvement, a description whereof is given in the words of the said F. F. Fowler in the schedule hereunto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed. Given under my hand at the city of Washington this fourteenth day of February, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States of America the eighty-ninth.

[SEAL.]

J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

31 D. P. HOLLOWAY,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that I, F. F. Fowler, of Crane township, county of Wyandotte, and State of Ohio, have invented certain new and useful improvements in elevating hay and other like products; and I do hereby declare that the following is a full, clear, and exact descrip-

tion of that part of my invention which relates to division No. 2, reference being had to the accompanying drawings, making part of this specification, in which—

Figure 1 represents a perspective view of the machine in use.

This invention relates to a contrivance which is expressly adapted for use on farms for the purpose of facilitating the stacking of hay and other similar products, by admitting of the use of a horse to perform the most laborious part of the work. By my invention
32 I obtain a "labor-saving machine" which can be readily moved about from one place to another, and which will enable a person to stack hay in localities where such work would otherwise be exceedingly inconvenient and laborious. I so construct a machine for the above-mentioned purpose that the same power that is employed to elevate a load of hay will also convey the load over the stack in a position to allow the attendant to deposit it thereon; and while this is the case I also provide for gathering the hay at any side of the machine and depositing it upon a stack, or erecting a stack at any other side of the machine; all as will be hereinafter described.

To enable others skilled in the art to make and use my invention, I will proceed to describe one form of machine by which my invention may be carried into effect.

In the accompanying drawings, A represents a platform or base which should be made of sufficient area to give steadiness and solidity to sustain the superstructure for elevating and moving
33 the load of hay to be placed upon the stack. In the centre of this base A is erected a perpendicular post D, which is stayed or braced in a rigid position by the inclined stays B B, which are carried up to a point which is near the upper end of said post D. G represents a horizontal jib or beam, which is pivoted in any suitable manner to the central post D, so that it will turn completely round the post, or the beam or jib G may be secured rigidly to a central post which is susceptible of rotating. In this case, the beam G may be sustained and strengthened by braces framed into it and the turning post; but, if the beam G turns around a fixed post, as I have represented, braces HH and collar I may be employed. At or near the extreme ends of the beam G are sheaves *a a* over which pass a rope or chain *b*, to one end of which is attached a fork *h* having a guy rope *i* attached to its handle, as represented in figure 1. This hay fork is constructed with tines *g*, and balanced by the bail *e*, which is connected at its ends to the end of the fork-head. This bail is the fulcrum of suspension of the fork, the tines being one arm of the lever, and the handle the other; thus the weight of the
34 hay on the tines can be counterbalanced by the power applied to the handle by the attendant who holds the guy rope *i* during the the operation of elevating a load, as will be further described. The opposite end of the rope *b* is carried down and passed through the pulley block *d*, and to this end of this rope a horse may be attached for elevating the hay, which is gathered on the fork at the opposite end of the rope.

The operation of my machine is as follows; The stack is built at

one side of the pitcher, and the pulley block or sheave *d*, on the base A is attached at or near the centre of the opposite side of the machine, and the hay to be elevated is deposited at either end of the pitcher. In the operation of elevating the hay, the man who handles the fork draws upon it until the cross-top beam swings around and occupies a position parallel with the stack or rick (and at right angles to the line of draught, or at any required angle.) He then plunges his fork into the hay, speaks to the horse to move on, steps back from the hay, and holds the guy rope *i* in his hand, and keeps
35 it sufficiently tight to keep the load off the side of the stack, and the beam or jib G in the same position occupied by it when the draught was applied. When the load is sufficiently elevated to pass freely over the stack, the person holding the guy rope *i* slackens his hold on it, and allows the beam G, with its loaded fork, to swing around in a line with the tine of draught, thus bringing the load over the stack, upon which it is now dropped by the operator releasing the rope *i*.

The operator can hold the beam G until the load of hay is elevated perpendicularly to a sufficient height to pass over the stack, or he can let the load of hay move toward the stack, as it is being elevated. In either case, the horse or power applied to elevate the load also moves it from the point where the fork receives it to the point where it is discharged.

It will be seen that during the operation of elevating a load of hay which has been gathered on the tines of the fork, the operator gradually resists the tendency of the beam G to assume a position in a line with the draught; in other words, he pulls against the
36 horse insofar as to enable him to control the movement of said beam, but not to prevent the load from being elevated. The operator can control the movements of the beam G, so long as he retains his hold on the guy rope *i*, and when a load has been deposited upon a stack, he moves the beam G back again, and at the same time takes up the slack rope as the horse backs, so as to get hold of the fork to reload it.

In carrying out my invention, the crane, or contrivance for elevating the load upon a stack may be mounted upon wheels or rollers, to facilitate its portability, but, for light structures, the wheels may be dispensed with.

I have described the ordinary form of hand-fork, in order to show that such a fork may be conveniently used in conjunction with the supporting and elevating contrivances, but I do not desire to confine my invention to such a fork, as others of a different construction may be used if desired.

By my invention, it will be seen that the attendant can build up a stack of hay, or other like product, without much expenditure
37 of labor on his part, the horse being compelled to do the greater part of the work. The beam which sustains the load while it is being elevated also serves as a lever to enable the horse, or power applied, to elevate this load, to move the load to the position for dropping it, without the horse stopping or changing the line of draught.

The tendency of the beam G, during the operation of elevating a load, is to assume a position in a line with the line of draught from which it was moved at the commencement of the operation to load the fork.

Heving thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1st. In constructing a machine for elevating hay or other like product, that the same power employed in elevating said product will also revolve the top of the machine while the load is being elevated, or when high enough to pass over the top of the stack, and so that it may be raised from either or any side of the machine and deposited on the stack, at any other side, and whenever derived, substantially as described.

38 2nd. An elevator or crane, when constructed as herein described, in combination with a device for grasping hay or other like product, and depositing it upon a stack, substantially as described.

F. F. FOWLER.

In presence of—
M. H. KIRBY,
A. W. BRINKERHOFF,
Witnesses.

Endorsed: Filed June 24th, 1865. Wm. H. Bradley, cl'k.

Circuit Court, July term, A. D. 1865.

Bond.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT, SETH TURNER, and GILBERT Wyman. } In chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

I hereby enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of
39 payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this twenty-fourth day of June, A. D. 1865.

DAVID BRADLEY.

Endorsed: Filed June 24th, A. D. 1865. Wm. H. Bradley, clerk.

40 And on this day, to wit, the twenty-fourth day of June, A. D. 1865, a writ of subpœna issued out of the said clerk's office against the said defendants in the said entitled cause, which said writ, together with the memorandum, the notice by the complainant for a writ of injunction, and the return of the marshal thereto attached, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to James D. Bennett, Seth Turner, and Gilbert Wyman, greeting:

We command you, and every of you, that you appear before our judges of our Circuit Court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of July next, to answer the bill of complaint of Finley F. Fowler this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon
41 pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Salmon P. Chase, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twenty-fourth day of June, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the eighty-ninth.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[50-cent U. S. rev. stamp.]

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

42 Circuit Court of the United States of America, northern district of Illinois, ss., July term, A. D. 1865.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT, SETH TURNER, and GILBERT WYMAN. } In chancery.

To the above-named defendants, Onarga, Iroquois co., Ill.:

Take notice that the complainant will move this honorable court on the first Monday of July, at the going in of the court on that day, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within-named defendants, in accordance with the prayer of the bill herein.

Yours, &c.,

GOODWIN, LARNED & GOODWIN,
Compl't's Solicitor.

Dated this twenty-fourth day of June, A. D. 1865.

43 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents, that I have appointed, and by these presents do appoint, Albion Jones my true and lawful deputy to execute the annexed writ, (Finley F. Fowler *vs.* James D. Bennett *et al.*,) and to make true return thereon, according to law.

[SEAL.] J. R. JONES,
United States Marshal of the Northern District of Illinois.

I have served the subpœna hereto attached, and the notice of motion for a writ of injunction thereon indorsed, in manner following, to wit, upon James D. Bennett therein named, by leaving a true copy thereof for him at his usual place of abode with Lavinia Longnecker, a free white person of more than ten years of age, and a member or resident of the family of the said Bennett, and informing her of the contents thereof, on the 28th day of June, A. D. 1865; and upon Seth Turner therein named by leaving a true copy thereof for
44 him with Mrs. Turner, the wife of the said Seth Turner, who was a free white person of upwards of ten years of age, and a member of his family, and informing her of the contents thereof, on the said 28th day of June, A. D. 1865; and also upon Gilbert Wyman therein named, by delivering to him personally a true copy thereof on the 29th day of June, A. D. 1865.

J. R. JONES, *U. S. Marshal.*
By ALBION JONES,
Special Deputy.

Albion Jones, being first duly sworn, deposes and says that he served the annexed writ and the notice of motion for a writ of injunction thereon endorsed, as stated in the foregoing return.

ALBION JONES.

Subscribed and sworn to before me this 1st day of July, A. D. 1865.

P. A. HOYNE,
U. S. Com. N. D. Ill.

[5 ct. U. S. rev. stamp.]

Endorsed: Filed July 3d, A. D. 1865. Wm. H. Bradley, clerk.

45 And on this day, to wit, the thirtieth day of October, A. D. 1865, came the said defendants, James D. Bennett and Seth Turner, by James A. Cowles, their solicitor, and filed in the said clerk's office their answer in the said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

The joint and several answers of James D. Bennett and Seth Turner, defendants, to the bill of complaint of Finley F. Fowler, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves, and each of them, all benefit and advantage of ex-

ception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint, contained for answer thereunto, or unto so much and such parts thereof as they are advised is or are material or necessary for them or either of them to make answer thereto, they, these defendants, severally answering, say: that they have no knowl-
46 edge of the granting, and surrender, and reissue of said letters patent to the complainant, as alleged by him, except from hearing and the inspection of alleged copies of the said patents; but they leave the complainant to make proof of all the allegations in respect to the issuing, surrendering, and reissuing of the said several patents, pursuant to law.

These respondents, neither admitting nor denying the allegations in the bill touching the same—and your respondents have no authenticated copies of the said pretended letters patent, and they do not know whether the copies which are made exhibits of said bill are true copies—and, therefore, neither admit nor deny the allegations of complainant in that behalf, but leave him to make proof thereof.

Respondents further answering, say that the patent mentioned in said bill of complaint as reissued on the ninth day of September, in the year of our Lord one thousand eight hundred and sixty-two, was not for the same invention patented and secured, or pretended
47 so to be to complainant, by the said patent of April 17th, 1860, but said reissue is without and beyond the invention in the said last-mentioned patent, as your respondents are informed and believe, and which fact they will seek to show and have set up as a complete answer and defence to the relief claimed by complainants, in and by his said bill of complaint, and which avoids the said patent.

Respondents, further answering, say that the said several patents mentioned in the said bill of complaint, as reissued February 14th, 1865, was not for the same invention secured, or pretended so to be, to the complainant, by the said letters patent, dated April 17th, 1860, on said reissued letters patent, dated September 9, 1862; but, that the said last-mentioned reissued letters patent, numbered respectively, 1869 and 1870, and each of them were without and beyond the invention embraced in the said original last-mentioned let-
48 ters patent or the first reissue thereof, as your respondents are informed and believe, and which facts they will also seek to show and prove on a final hearing hereof, and which they have set up as a complete bar to the relief prayed for in said bill of complaint, and which avoids the said patent.

Respondents further answering, say that they are informed and believe that the said complainant was not the first and original inventor or discoverer of the said several things patented and described in the said two reissued patents, numbered respectively 1869 and 1870, or either one thereof, or of the things patented in the original patent of which the same claim to be the reissues of, in two patents, numbered as last above mentioned, or of the substantial and material part thereof, claimed as new, and that all the allegations in said bill to that effect are untrue and false, and that a previous invention, knowl-

edge, and use of the said several things, or of the substantial
49 and material parts thereof, claimed as new, was known to diverse persons and at diverse places prior to the pretended invention and discovery thereof, respectively by the complainant.

Respondents, further answering, say that they are informed, and believe, and charge the fact to be, that the said complainant was not the original and first inventor of the several things, or of a substantial or material part of the several things patented, described in the said letters patent as [as] aforesaid reissued to the complainant, and claimed therein as new, nor of the several things patented and described in the original letters patent which were surrendered, and of which the same are reissues as mentioned in the bill of complaint; but that a previous knowledge, invention, and use of the said several things, or of the substantial or material part thereof, claimed as new, was had and made by diverse persons, and at diverse places, prior to the pretended invention by the said complainant, and that the
50 defendants, will in their defence, rely on the fact of a previous invention, knowledge, and use of the said several things, or their substantial and material parts of the said several things patented described in the said reissued letters patent Nos. 1869 and 1870; and each of the said reissued letters patent and of the alleged inventions of the said complainant before the said patents, both original and reissued, or inventions of the complainant, by Ezekiel Holmes, of Winthrop, in the State of Maine, and used by him, the said Ezekiel Holmes, on his farm, at or near Winthrop, aforesaid, and elsewhere in the State of Maine, for several years prior to, subsequent to the year 1860; also, by Thomas Y. Brown, of Brownsville, Jefferson county, in the State of New York, but now resides at Chatsworth, Livingston county, in the State of Illinois, and used by him, the said Thomas Y. Brown, on his farm, at or near Brownsville, Jefferson county, in the State of New York, and also on his farm at or near Chatsworth,
51 Livingston county, in the State of Illinois, for more than two years previous to the 17th day of April, 1860.

Also, by John Baker, of Bloomington, in the State of Illinois, who made and used a machine embodying the complainant's inventions, as alleged in his bill of complaint, at or near Bloomington, in the State of Illinois, for more than two years previous to the 17th day of April, 1860.

Also, by L. Bartholomew, of Galesburg, Knox county, in the State of Illinois, and by him, the said L. Bartholomew, used on his farm at or near Galesburg, and elsewhere in the State of Illinois, for more than two years previous to April 17th, 1860.

Also, by A. D. Bishop, of No. 181, East 41st st., of the city of New York, in the State of New York, and used by him, the said A. D. Bishop, the Morgan Iron Works, foot of 9th st., East river side, in the city of New York, and at diverse other places in the United States, for more than two years previous to the 17th day of April, in the year 1860.

52 And your respondents, further answering, deny that the several separate improvements and inventions contained in the

several reissued letters patent, mentioned in the complainant's bill of complaint, and marked Nos. 1869 and 1870, constitute separate parts or features of an entire machine for elevating and stacking hay, or that they may be constructed for use, or can be used as one machine in that department of agriculture.

Respondents, further answering, deny that the validity of the complainant's patents, as alleged in said bill of complaint, or the exclusive right to the privilege or monopoly of the said several inventions, have become fully or in any degree settled or established by the complainant's long and extensive use of the same, or by the acquiescence of the public by the purchase and use of a large number of machines, or by the acceptance of grants and licences under the complainant, or that the complainant's title to the said alleged improvements and inventions, alleged to be secured to complainant by the said several reissued letters patent mentioned in said
53 complainant's bill of complaint, or that complainant's exclusive right, or any right he may have therein, remain without reasonable question.

But, respondents, further answering, say that complainant's right and title to said alleged inventions, mentioned in complainant's said bill of complaint, have never been established in any court, either of law or equity.

Respondents, further answering, deny that they have at any time made, constructed and sold, and made and kept for sale, and made and sent out of said district and caused to be sold, and made and vended to others to be used, a machine or machines substantially like and upon the plan or principle, or in imitation of, and embracing the alleged invention and improvements of the complainant contained in said reissued letters patent, or any part thereof, or that they are now making, selling, or vending to others to be used or sold, the said machine.

Respondents, further answering, say that the only machine they have ever made, used or sold, or in any way delt in, was
54 made under and by virtue of a certain patent therefor, granted this respondent, Seth Turner, hereinafter stated. That on the thirteenth day of December, in the year 1864, your respondent, Seth Turner, then and now being a citizen of the United States, and the first inventor of a certain new and useful improvement in derricks, there was issued to him of said last-mentioned date certain letters patent for improvement in derricks, and which is described in said letters patent and schedule thereunto attached, in such full, clear, and exact terms as to enable any person skilled in the art to make, construct and use the same, and which letters patent were duly issued to this respondent therefor, he having complied with all the prerequisites of the law in that behalf, under the seal of the Patent Office of the United States of America, duly signed by the Secretary of the Interior, and countersigned and sealed by the Commissioner of Patents, bearing date the day and year last aforesaid, and duly delivered to your respondent,
55 Turner, whereby there was secured to your respondent,

Turner, his heirs, administrators, and assigns, for the term of seventeen years from and after the date of the said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention in the said letters patent mentioned and referred to; that a description of said improvement or invention was given in the words of your respondent, Turner, the said patentee himself, in a certain schedule in writing, which was accompanied by drawings, and a written reference, in due form of law, annexed to said letters patent, when the same were issued, and which schedule made part of said letters patent, a copy of which schedule and letters patent, without the drawings, are annexed hereto, marked schedule "A," and made a part hereof, the original being in the possession of these respondents, and ready to be produced as the court shall order herein, and to which reference is made for greater certainty, that said in-
56 vention was not, at the time of this respondent's, Turner's, application for a patent thereof, in public use or on sale, by his consent or allowance, and that he was the original and first inventor of the thing patented to him in and by said letters patent.

Respondents further answering, say that during the winter of 1864 and 1865, and the spring of the last-mentioned year, they manufactured about derricks, and have now on hand and unsold about derricks, all of which were made under the said patent, issued to the said Turner; but these respondents deny that any of the said derricks so made by them were substantially like, or upon the plan and principle, and in immitation of, and embracing the pretended invention and improvement of the complainant, contained in his said reissued and original patent.

And this respondent, Seth Turner, further says that he verily believes that he was and is the original and first inventor of the
57 invention or improvement for which the said letters patent were issued to him as aforesaid.

And these defendants deny all, and all manner of, unlawful combination and confederacy wherewith they are by the said bill charged without this, that there is any other matter, cause or thing, in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and assailed or denied, is true to the knowledge and belief of these defendants, all which matters and things this defendant are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JAMES D. BENNETT.
SETH TURNER.

JAMES A. COWLES, *Solicitor.*

58 *Schedule A.*

E Pluribus Unum, No. 45445.

The United States of America, to all to whom these letters patent shall come:

Whereas Seth Turner, of Onarga, Illinois, has alleged that he has invented a new aud useful improved derrick, which he states has not been known or used before his application, has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said invention, and that the same hath not to the best of his knowledge and belief, been previously known or used, has paid into the treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said invention, and praying that a patent may be granted for that purpose:

59 These are therefore to grant according to law to the said Seth Turner, his heirs, administrators or assigns, for the term of seventeen years from the fourteenth day of December, one thousand eight hundred and sixty-four, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said invention, a description whereof is given in the words of the said Seth Turner, in the schedule hereunto annexed and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereuuto affixed.

Given under my hand at the City of Washington, this thirteenth day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-ninth.

J. P. USHER, *Secretary of the Interior.*

Countersigned and sealed with the seal of the Patent Office.

[SEAL OF THE PATENT OFFICE.] JOHN L. HAYS,
Act'g Commissioner of Patents.

60 *The schedule referred to in these letters patent and making part of the same.*

To all whom it may concern:

Be it known that I, Seth Turner, of Onarga, in the county of Iroquois and State of Illinois, have invented a new and improved derrick for elevating hay, grain etc., for loading, stacking or moving the same, and I do hereby declare that the following is a full clear and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawings forming part of this specification.

The drawing represents a perspective view of my invention.

This invention relates to a new and improved derrick, arranged in such a manner that it may revolve, and provided with a fork, tackle spring and guide, as hereinafter fully set forth, whereby the hay or grain may be elevated to any desired height and then swung around

over the stack, rick, cart or mow, and discharged, and the empty fork then lowered, to be again loaded, elevated and discharged.

A represents a framing constructed in any proper manner
61 to ensure strength with lightness; and B is a shaft which is placed vertically in the framing A, its lower end being stepped in a cross piece *a* at the bottom of the framing, the shaft being allowed to rotate freely in the latter.

At the lower end of the B there is a metal ferrule C, which is notched at suitable and equal distances apart, as shown at *a**, and D is a rod which is fitted in guides *b*, on the cross-piece *a*, and has a spiral spring E upon it, said spring having a tendency to keep the rod D pressed towards the ferrule C.

The rod D, has a cord attached to it; to the upper end of the shaft B, is attached an oblique or inclined rod G, which is braced by a bar H, and I is a rope which runs through a sheave on pully at the other end of G, said rope passing through a guide e, on the cross-piece *a*, near the lower end of the shaft B. The arm J, is slotted longitudinally as shown, *f*, and a bolt g passes through the slot *f* into the framing. This mode of attachment admits of the arm J being turned or adjusted either to the right or left, and also of being vertically lengthened as may be required.

62 The rope I has a fork at its . Any of the approved hone hay forks may be employed. This fork after being loaded is elevated by a hone attached to the opposite end of the rope I, and when the fork is elevated to the desired height, the operator pulls the cord F, which causes the rod D to be drawn out from one of the notches *a** in the ferrule C, and the loaded fork is swung around over the stack, rick, cart or mow, and the horse being stopped the operator pulls the trip cord of the fork, and the hay or grain is discharged. The horse is then backed, the shaft turned back to the original position by pulling on the trip cord, the rood D being forced by the spring E, into a notch *a** of C, to prevent shaft B from turning. The fork then lowered and the operation repeated.

The arm J is adjusted relatively with the shaft B and the place where the hay or grain is to be discharged; so as to prevent the shaft being turned more than the required distance each time the fork is swung around over the place where the load is to be discharged, and by lengthening or shortening the arm J, the speed of the turning of shaft B for that purpose may be varied as desired.

63 I claim as new, and desire to secure by letters patent, the rotating shaft B, provided with the oblique arm G, and fitted into the framing A, as shown in combination with the adjustable arm J, and the rod or catch D, and the notched ferrule C, or their equivalents for securing the shaft B, all arranged and used in connection with a horse hay fork and tackle, substantially as and for the purpose set forth.

SETH TURNER.

Witness:
R. H. HUNGERFORD,
M. H. MISSER.

Endorsed: "Filed Oct. 30th, 1856. Wm. H. Bradley, cl'k."

64 And on this day, to wit, the twenty-fifth day of November, A. D. 1865, came the said complainant, by his solicitors, and filed in the said clerk's office his replication in the said entitled cause, which said replication is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit Court of the United States in and for said district, in chancery.

Replication.

The replication of Finley F. Fowler, complainant, to the joint and several answers of James D. Bennett and Seth Turner, defendants to the bill of complaint of said complainant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer for replication thereto, says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncer-
65 tain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing, whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

GOODWIN, LARNED & GOODWIN,
Sol'rs for Comp't.

Endorsed: Filed Nov. 25, 1865. Wm. H. Bradley, cl'k.

66 And on this day, to wit, the third day of March, A. D. 1866, in the record of the proceedings of the said court in the said entitled cause, is the following entry, to wit:

Record.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT, SETH TURNER, and Gilbet Wyman. } Chancery.

Now come the parties, by their solicitors, and the defendants, by their solicitor, move the court to extend the time in which to take proof herein, and the motion being approved by the complainant's solicitors, upon the defendants' solicitor filing a stipulation that nothing shall be done by the defendants to prejudice the rights of the complainant herein, the time is extended by the court ninety days in which to take proof herein.

67 And on this day, to wit, the twenty-fifth day of May, A. D. 1866, came the respective solicitors for the complainant and defendants, and filed their mutual stipulation in the said entitled cause, which said stipulation is in the words and figures following, to wit:

United States Circuit Court, N. D. Illinois.

Stipulation.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT, SETH TURNER, and Gilbert Wyman. } In chancery.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, that the bill of complaint filed against the defendants in the said cause may be, and is hereby dismissed as against Gilbert Wyman, without costs to said Wyman, and without prejudice to the other parties in the case.

April, 1866. GOODWIN, LARNED & GOODWIN,
Comp'l's Sol'rs.
JAMES A. COWLES, *Def'ts' Sol'r.*

Endorsed: Filed May 25th, 1866. Wm. H. Bradley, cl'k.

68 And on this day, to wit, the twenty-fifth day of May, A. D. 1866, in the record of the proceedings of the said court in the said entitled cause, is the following entry, to wit:

Record.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT, SETH TURNER, and Gilbert Wyman. } Chancery.

Now comes the complainant, by his solicitors, and on their motion it is ordered by the court that this cause be dismissed as to the defendant, Gilbert Wyman, without prejudice as to the other defendants, as per stipulation filed.

69 And on this day, to wit, the fourth day of June, A. D. 1866, in the record of the proceedings of the said court in the said entitled cause, is the following entry, to wit:

Record.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT, SETH TURNER, and Gilbert Wyman. } Chancery.

Now comes the complainant, by his solicitor, and moves the court to set this cause down for hearing, and it appearing to the court that the solicitor of the defendants had notice of this motion, and no ob-

jection being made thereto, it is thereupon considered by the court that this cause be set down for hearing upon the bill, answer, replication, exhibits, and proof on file herein.

70 And on this day, to wit, the 13th day of June, A. D. 1866, in the record of the proceedings of said court in the said entitled cause, is the following entry, to wit:

Record.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } Chancery.

This cause having been brought on to be heard this day, upon the pleadings and proofs therein, on due notice to the defendants' solicitor, and having been heard and duly considered by the court, thereupon, on motion of Goodwin, Larned & Goodwin, of counsel for the complainant, no counsel appearing for the defendants, it is ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree:

First. That the reissued patents granted to the said complainant, Finley F. Fowler, dated February fourteenth, in the year one thousand eight hundred and sixty-five, and numbered reissue numbers 1869 and 1870, set forth in the bill of complaint in this cause, are valid,

71 and that the said Finley F. Fowler thereby became vested with the exclusive rights thereby granted, as in said bill alleged and claimed.

Second. That the said defendants, James D. Bennett and Seth Turner, have disturbed, violated, and infringed upon the said complainant, in his exclusive rights under the said reissued patents, by the sale of the machine of the said defendants, in the pleadings and proofs in this cause mentioned and described, and known as Bennett & Turner's hay-stacking machines.

Third. That the complainant is entitled to a discovery and account from said defendants, James D. Bennett and Seth Turner, of the gains and profits had and received by them, said defendants, or either of them, in consequence of the infringements and violations of the exclusive rights of the said complainant aforesaid, and on account of the value of the complainant's patent improvements in said reissued letters patents secured to said complainant, in and upon each and every machine either manufactured or sold by them, or either of them, now on their hands, or either of their hands, for sale,

72 since the fourteenth day of February, eighteen hundred and sixty-five, containing the said patented improvements of said complainant, or either of them.

Fourth. That it be referred to Henry W. Bishop, jr., esq., one of the masters of this court, to compute, ascertain, and state an account of the said gains and profits received by said defendants, and the value of said patented improvements adjudged to the complainant as against the said defendants, in the last foregoing paragraph of this

decree, and that said master report the amount thereof to this court with all convenient speed; and the said master is directed to take the proofs and testimony of witnesses, and report the same, with his conclusion thereon; and he is hereby authorized to summon the said defendants before him, and to examine them on oath, and to require the production before him of the books of account of the said defendants, touching the matters hereby referred to him, and the proofs already taken in said cause may be used on said reference, and such other testimony may be taken for use before the said
73 master, under the sixty-seventh rule of this court in equity, as either party may desire.

Fifth. It is also further ordered and adjuged, that the said defend-ants, James D. Bennett and Seth Turner, be, and they are hereby, perpetually enjoined from making, constructing, selling, using, or vending to others to be used, or keeping for sale, either themselves, or by their agents, servants, or employees, any hay-stacking machine or machines or derrick, such as those heretofore sold by them, called the Bennet & Turner hay-stacking machine, referred to and described in the evidence taken in this cause, or any other machine upon the plan and principle, and containing the improvements set forth, described, and claimed in the said reissued letters patent of the said Finley F. Fowler above mentioned, during the existence of said patent, and that an injunction issue accordingly. And all further directions are reserved until the coming in of said report.

74 And on this day, to wit, the twelfth day of November, A. D. 1866, in the record of the proceedings of the said court, in the said entitled cause, is the following entry, to wit:

Record.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT *et al.* } Chancery.

Now comes the complainant, by his solicitor, who files the report of Henry W. Bishop, jr., the master herein.

75 And on this day, to wit, the twelfth day of November, A. D. 1866, came the said Henry W. Bishop, jr., master, &c., and filed in the said clerk's office, his report in the said entitled cause, which said report is in the words and figures following, to wit:

United States Circuit Court, northern district of Illinois.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT *& al.* } In chancery.

In pursuance and by virtue of an order of said court, entered in said cause, on the 13th day of June, A. D. 1866, by which, among

other things, it was referred to the undersigned, a master in chancery of said court, to take testimony in said cause, and compute, ascertain, and state an account of the gains and profits received by said defendants, or either of them, in consequence of the infringements
76 and violations of the exclusive rights of the complainant's patent improvement in the reissued letters patent, secured to said complainant, in and upon each and every machine, either manufactured or sold by them, or either of them (or now in their hands, or either of their hands, for sale) since the 14th day of February, A. D. 1866, containing the said patented improvements, or either of them, I hereby report, that on the second day of July, A. D. 1866, and at other times subsequent thereto, and mentioned in said testimony, I was attended by Mr. Goodwin, (of Messrs. Goodwin & Larned, solicitors for complainant,) who produced before me Frank Wicks, James G. Bennett, Isaac A. Hawley, and Andrew Barr, witnesses upon the part of the complainant, who were by me duly cautioned and sworn to make true answerts to such questions as should be put to them under the direction of the master; Mr. Bennett, one of the defendants, appearing in person. The complainant solicitor also offered in evidence the testimony before taken in said cause upon the part of said complainant.

77 I further report, that upon the part of the defendants, the testimony of Charles E. Whitman, P. W. Gates, J. D. Bennett, and the re-examination of Frank Wicks, was taken by agreement of the solicitors in said cause, before J. H. Tompson, esq., a notary public, to be used by me in making this report, and I hereto attach the same.

And I further report, that I find from said evidence—

First. That during the time mentioned in said decree, to wit, since the 14th day of February, A. D. 1865, there have been made by Andrew Barr, under said defendants, one hundred and twenty-seven (127) machines, mentioned and described in this cause as the Benett & Turner hay-stacking machines, and by Isaac Hawley, under said Bennett & Turner, defendants, during said time, fifty-nine (59) of said hay-stacking machines.

Second. That the gains and profits had and received by the said defendants, in consequence of the infringements and violations of the said complainant's patent improvement, is the sum of ten dollars for each and every machine so manufactured by them.

Third. That there is due and owing said complainant from said defendants, in consequence of the infringements and violations of the exclusive rights of the complainant aforesaid, the sum of eighteen hundred and sixty ($1,860) dollars, being the sum of ten dollars for each and every machine manufactured as aforesaid, for which sum decree should be entered.

All of which is respectfully submitted.

HENRY W. BISHOP, JR.,
Master in Chancery of Circuit Court of United States for Northern District of Illinois.

[H. W. B., jr., rev. st'mp, Nov. 19, '66.]

Master's fees.

4 days	20 00
Report	10 00
60 fol	12 00
2 summons	2 00
6 exhibit	1 50
	$45 50

78 United States Circuit Court for the eighth circuit and northern district of Illinois.

Master's summons.

FINLEY F. FOWLER, complainants,
vs.
JAMES D. BENNETT and SETH TURNER, *et al.*, defendants. } In chancery.

In pursuance of the authority and direction contained in an order made in the above-cause by said court, dated the 13th day of June, A. D. 1866, I, the undersigned, master in chancery of said court, do hereby summon you, H. H. Fillbrick, of Havannah, Ills., to appear before me at my office, No. 78 Dearborn st., in the city of Chicago, on the 2nd day of July, A. D. 1866, at 10 o'clock in the forenoon, to be examined orally on oath touching matters and things, as set forth in a bill of complaint filed in this cause. And hereof fail not at your peril.

Dated the 19th day of June, A. D. 1866.

HENRY W. BISHOP, JUN'R,
Master in Chancery.

79 United States Circuit Court for the eighth circuit and northern district of Illinois.

Master's summons.

FINLEY F. FOWLER, complainants,
vs.
JAMES D. BENNETT *et al.*, defendants. } In chancery.

In pursuance of the authority and directions contained in an order made in the above cause by said court, dated the 13th day of June, A. D. 1861, the undersigned, master in chancery of said court, do hereby summon you, Andrew Barr, C. L. Whitcomb, and Cyrus Jones, Isaac Hawley, H. H. Filbrick, S. A. Alworth, to appear before me at my office, No. 78 Dearborn st., in the city of Chicago, on the 2nd day of July, A. D. 1866, at 10 o'clock in the forenoon, to be examined orally on oath touching matters and things as set forth in a bill of complaint filed in this cause. And hereof fail not at your peril.

Dated 19 day of June, A. D. 1866.

HENRY W. BISHOP, JR.,
Master in Chancery.

80 United States Circuit Court for the eighth circuit and northern district of Illinois.

Master's summons.

FINLEY F. FOWLER, complainants,
vs.
JAMES D. BENNETT *et al.*, defendants. } In chancery.

In pursuance of the authority and directions contained in an order made in the above cause by said court, dated the 13th day of June, A. D. 1866, I, the undersigned, master in chancery of said court, do hereby summon you, James D. Bennett and Seth Turner, to appear before me at my office, No. 78 Dearborn st., in the city of Chicago, on the 2d day of July, A. D. 1866, at 10 o'clock in the forenoon, to be examined orally on oath touching matters and things as set forth in a bill of complaint filed in this cause. And hereof fail not at your peril.

Dated the 19th day of June, A. D. 1866.

HENRY W. BISHOP, JR.,
Master in Chancery.

81 *Examination of Andrew Barr, on the part of the complainant, commenced this second day of July, A. D.* 1866.

Interrogatory first. Where do you reside?

Ans. I reside at Urbana, Champaigne co., Ills. I know the defendants for four or five years. I began to build hay-stacking machines the first of December, 1864. I began 150, and got out 117.

Interrogatory second. Look at the model now shown you, with the mark, "Defendants' Exhibit No. 1, deposition of Joseph Haas, No. 30. 1865, P. A. Hoyne, commiss.," and state how the machines built by you compare with this exhibit.

Ans. This is a correct model of the machine, except at the bottom of the rotary central shaft it has a lever instead of a spiral spring, as shown in the model. I have a memorandum of the amount of machines built. This is a book containing it kept by myself and brought from Urbana. There were 117 machines gone from the shop, ten finished and remaining at the shop; the others of the 150 are not finished. These machines were made for Bennett & Turner, and

82 myself. I was to have sixty dollars per month, and the right to sell in two counties, and got the machines at cost. I mean the right to the stacker. The first machine was shipped the first day of December, 1864, to Maroa, Macon co. Pages 212 and 213, 214, 215, contain the memorandum referred to by me, with the date of the shipments of these machines. A copy of said pages is annexed hereto and marked Exhibit No. 1, to this testimony.

Interrogatory third. State what time the entries on page 212 are made with reference to those on the other pages.

Ans. The first, on page 212, is made June 2d, 1865. The entries on page 212 are those of the sales made by myself; those on 213,

214 and 215, are the sales made by Bennett & Turner, and they are not put down with reference to the time so much as to the persons selling.

Inte. 4th. What became of the machines left unfinished?

Ans. They are left at Urbana, under mortgage, which was out the 1st of May, 1866. They are held now by P. T. Hubbard, West Meridian, Connecticut. I mortgaged these machines. They,
83 Bennett & Turner, sold them to me for a back debt. The mortgage included all there was on hand, finished and unfinished.

Int. 5. State if you can, how many machines have been sold and sent away, how many remained on hand finished, and how many unfinished, at the time of the mortgage; how nearly the unfinished ones were completed, and when they were delivered under the mortgage, if at all.

Ans. There were 117 sent away. I cannot tell whether they were all sold. None remained on hand quite finished then, but a few are finished now. I should think they were about half finished. I mean half made. They were taken possession of by T. T. Hubbard, the mortgagee, on the first of May, 1866.

Int. 6. State whether or not in the year 1865, or at any other time, you manufactured any setts of irons and bolts for Bennett and Turner to be used by others in building hay-stacking machines similar to the model referred to by you.

Ans. I did not manufacture any. I only did wood work. They
84 were bought of T. T. Hubbard, already made. A part of them were put on the machines manufactured by me, and a part of them were sold, as set forth in the memorandum book and schedule referred to.

Int. 7. Have you sold any of those machines and delivered them, since the first of February, 1866?

Ans. No, sir; I have taken some orders, but delivered none.

Int. 8. What did you do under those orders in regard to the machines?

Ans. I havn't done anything under them.

Int. 9. You state that the machines referred to by you had a lever arrangement at the foot of the central revolving shaft as a substitute for the spiral spring shown in the model referred to. State what the object of that on the machine was, and if you considered it of any material advantage or utility in the machine over and above the machine of Fowler, in model marked "Exhibit F."

(Interrogatory objected to by defendant, Bennett, in person.)

Ans. The object was to stop and hold the machine at any
85 desired point. I did consider it an advantage at the time, but some farmers told me they did not use it except in moving the machine from place to place; they considered it good for steadying the machine.

(Cross-examination waived by defendant Bennett.)

ANDREW BARR.

Subscribed before me the 2d day of July, 1866.

H. W. BISHOP, JR., *Master, &c.*

86 *Examination of Isaac A. Hawley, on the part of the complainant, commenced this second day of July, A. D.* 1866.

Interrogatory first. Where do you reside? what is your name and age?

Ans. Name, Isaac A. Hawley; age, 44 years; residence, Pekin Tazwell co., Illinois.

Int. Do you know the defendants in this case?

Ans. I do.

Int. 3. State what business relations you have had with them during the last two years in reference to the building of hay-stacking machines?

Ans. In February, 1865, I, in company with Mr. W. H. Wallingford, bought the right to manufacture these machines for thirteen counties in this State, meaning what we called Turner's hay-stackers.

Int. 4. Look at the model marked "Defendants' Exhibit, No. 1," and state how the said model compares with the machines referred to by you in your last answer, in similarity or dissimilarity.

Ans. We made substantially the same machine, except the dog at the foot of the main part was moved by spring, and weight
87 instead of the spiral spring on the model. This year we don't have anything on.

Int. 5. How many of such machines have you manufactured and sold, and within what times?

Ans. For the year 1865 we made twenty-four machines; we sold of them twenty-three. For the year 1866 we have made thirty-five, and only one sold as reported yet; a part are shipped to our agents, and a part in our own hands.

Int. 6. State whether or not you or your concern have received from Messrs. Turner & Bennett, or either of them, any agreement of idemnity or agreement to protect you in the manufacture and sale of the machines referred to by you in your previous answer; and if so, what was the substance of the same when made, and to what machines does it refer.

Ans. We did receive such an agreement in writing. I here produce it. A copy thereof is hereto annexed, marked "Exhibit No. 2," of this testimony. The agreement I think was written by Mr. Bennett. It is signed by Bennett & Turner.

88 (Defendant Bennett here admits the signature to be that of his firm, Bennett & Turner.)

Int. 8. How long before the date of said agreement was it that you purchased the right of the thirteen counties as spoken of?

Ans. About a month, I should think.

Cross-examination of Isaac A. Hawley, commenced this 2d day of July, 1866.

Int. 1. Have any parties commenced any action against you for manufacturing these machines?

Ans. There have not, as I know of.

Int. 2. Do you know any rule or custom whereby the patent fee is determined? If so, state it.

(Objected to by complainant's counsel.)

Ans. I do not know of any rule for determining it.

ISAAC A. HAWLEY.

89 *Exhibit No. 1.*

		Orders filed.		Number.	
1865.					
June	2.	Tosch Faves Peni, one stacker		1	32 80/100
		Genning Kantone, one stacker, agent		1	
		Gunnip, Daniel, Vermillion, one stacker agent, fork and roap		1	
		Leri Long, Georgietown, one stacker, agent, 4 and 2 roaps		1	
	18.	Wm. Meberry, Solona, one stacker, fork and roap		1	32 80/100
		Benjamin Browning, Fairman, compleet, agent		1	
		Mr. Arworth, Champaign, compleet, agent		1	
		S. Gunnip, Daniele, compleet, agent		6	
	20.	B. S. Stiles, Paxton, Fordler, compleet, agent		1	
	29.	Eizrae Marquess		1	32 80/100
		Leir Long, Georgetown, to roaps, agent		2	
		Mr. Frinsco, Philo		1	
July	10.	Brooks & Prat, Jacksonville, agent		3	105
	11.	S. Raye, 13 lbs. roap			455
	11.	Brooks & Prat, one stacker, agent		1	35
	11.	Mr. Foster, stacker, compleet		1	32
	13.	James Allen, stacker and roap		1	32
	15.	Leir Long, two stackers		2	32
		Dunlap, do fork and roap			
		Estap Rantoul, compleet		1	32
Aug.	1.	Gunnip, Daniele		1	
	1.	Snider, ventone, roaps and		1	

90 Bennett & Turner.—Orders filed.

				Number.	
1864.					
Dec.	26.	O. L. Whitcomb, Moroa, Macon, on tacker		1	
1865.					
Jan.	20.	Bennett & Turner, Onarga, on stacker		1	
Feb.	25.	C. L. Whitcomb, Moroa, Macon, one full set of patrens	£10		
	25.	Bennett & Turner, Onarga, one stacker		1	
	25.	Do. extra head roller and long braces	£ 5		
Mar.	22.	William McKey, Gilman, one stacker		1	
	29.	John A. Curry, Petersburg Mineral Co., one stacker		1	£25
	29.	Willingford & Hawley, Pekin, Tazwell Co., on stacker		1	
	22.	H. H. Philbrick, Havana, one stacker		1	£20
May	2.	H. H. Philbrick, extra runners	£ 3		
		Gilbert Wayman, Bloomington, one stacker		1	
	9.	Bumener & Fenner, St. Louis, Mo., 2 stackers		2	
	9.	Dumy, Cain & Co., Alton, Ill., 3 stackers, Karet 50		3	£60
	9.	Gundlick & Esler, Belliel, St. Clair, one stacker, one fork and roap		1	
	9.	John Beard, Olney, 5 stackers, one Karet	50	5	£100
	23.	S. K. Able, Wirzemonic, Wis., one stacker		1	
	24.	John Scot & Son, Terre Haut, Ind., 6 stackers, one box	50	6	£199 40/100
	24.	A. Hasburk, Mattoon, Coles Co., 5 stackers, one box	50	5	£125
	25.	Joseph Koes, Elpasso, 15 stackers, one box	75	15	£300
		Do. Jones, Fairberry, one stacker		1	£25
	28.	Senetary fair, Chicago, one stacker		1	
		extra work and ring	£12		
May	9.	Mills & Morris, Fulton, 3 stackers		3	£60
		Totel			912 40/100

91	June 20. Nelson James, Sowanda McLane, fork, roap, and one set of bolts, foot bolt compleet	£325		
	Mr. Keer, Elmwood, foot bolt and fixings	£135		
	S. Jones, Fawberry, one set of bolts compleet	£325		
	W. S. Phillips, Onowa City, two set of irons compleet	£11		
	June 20th, '65.			
June	20. William Warren, Privetown, compleet		1	
	20. Stephen Tonwsend, Sicomore, stackering		1	32
	Mr. Tents, Davenport, Iowa, stacker		1	
	24. Dumy, Cain & Co., Alton, Ill		5	£100
	O'Poole, Shawneetown, Gallatin		2	
	S. Colcord, Vandalia, T		1	
	28. W. Norris, six set irons	£35		
	28. G. R. Able, Tangemoni, Don Co. Wis., six set bolts and foot bolts	£24		
July	5. C. L. Whitcom, 56 set bolts castings, 50 foot bolts, 6 stepples, 12-6 side pulleys, 1 ring and gudgeon, 1 rolling	£148		
	5. W. S. Foster, Porterville, Warren Co., Ind., No. 82 and 83, 2 stackers, 1 fork, 1 roap, C. C. Drings		2	£81 90/100
N 92	7. Dickerson, Bennett & Co., Louisville, Kentucky, stackering		1	
N 9394	do. Burnum, Fenner & Co., St. Louis, Mo. rings		2	£65 80/100
N 95	do. Thomas Quick, Car of M. Mary, Trington, Ill, stacker compleet		1	£30
N 96	do. Gundack & Esler, Belisle, St. Clar, stacker compleet		1	£60
92	July 8th, '65.			
N	86 8. Minoka, Ill., R. Gardiner, ring		1	
N	86 do. Jolliett, Ill., A. W. Jewett, ring		1	
N	87,88do. Kankakee, H. G. Koone, rings		2	
N	89,90do. Watsaka, John Fairman rings		2	
N	91do. Kent, Indina, I. Watkins, compleet.		1	
N	97,98,83,84. Ottowa, Ill., Lester Underwood, rings		4	
	15. Bennett & Turner, Onarga rings		2	
	15. Gilbert Wayman, Fairberry rings		2	
	17. Bernett, Richmond, Ind., one set compleet fixing	£35		
	12. Baltes, Virginia City, Cass., fork roap		1	
	18. Louis Barnett, Richmond, Ind., 12 set bolts and foot bolts com	£54		
	July 23rd, 1865.			
	J. Fairman, stacker		1	
	Ba C pole and long bars	£6		

93 *Exhibit No. 2.—H. W. Bishop, jr., Master, &c.*

PEKIN, *March 14th*, 1865.

This is to certify that whereas Seth Turner, of Onarga, Iroquois co., and State of Illinois, has obtained a patent from the United States of America for an improvement in hay derricks. Now this indenture witnesseth that the said hay stacker is no infringement on any other person or persons' patent whatsoever. And whereas we have this day sold our right and interest in thirteen counties in the State of Illinois to Wallingford & Hawley, of Pekin, Illinois, we will warrant and defend the said W. & H. against any or all damages that they may sustain, and obtained from them through a legal course of justice for such infringement; with this proviso, however, that the said

W. & H. are to notify us, Bennett & Turner, of the commencement of any suit against them, and give the said B. & T. the opportunity to give our personal attention to the contesting of such suit. Otherwise this guarantee is of no effect; and it is further agreed that we, B. & T., are to have the right to appeal in the name of Wallingford & Hawley to any higher tribunal.

BENNETT & TURNER.

94 This is to certify that the erasure of the words "are willing to," and the substitution of the word "will," in the within document, was done by us in Pekin, April 5, 1865.

BENNETT & TURNER.

95 *Examination of James G. Bennett, defend'dt, on the part of the complainant, commenced this second day of July, A. D.* 1866.

Int. 1. Are you one of the defendants in this suit?

Ans. Yes, sir.

Int. 2. Have you, in connection with Mr. Seth Turner as a partner in business, been engaged in the manufacture of hay-stacking machines designated as Turner's improved hay stacker.

Ans. I have.

Int. 3. Where manufacturing them?

Ans. At Urbana, Champaigne co., Illinois.

Int. 4. Where are the machines so manufactured sold for Bennett & Turner?

Ans. At different places in the State of Illinois, Indiana, and Missouri.

Int. 5. Look at the model marked Defendant's Exhibit No. 1, and state how the machines manufactured by Bennett & Turner compare with said model in similarity or dissimilarity.

Ans. The same in the main.

Int. 6. How many of such machines have been manufactured by Bennett & Turner since February 14th, 1865.

Ans. The books already exhibited by the witness Andrew Barr will show better than I can state. I presume it is correct—

96 the book that is the original of Exhibit No. 1.

Int. 7. In addition to the machines spoken of in the book as manufactured, have you or Mr. Turner sold to any person or persons the right to make, construct and use a machine or machines like the model "Defendant's Exhibit No. 1" since the 14th day of Febuary, 1865? If yea, state when, to whom, and whether such machines were built by any person in pursuance of such right; and if so, by whom.

Ans. I cannot be positive, but I think not since that time.

Int. 8. Do you know Beard & Cluey, in Richland county, Illinois?

Ans. No, sir.

Int. 9. Do you know whether any machines were sent to those parties from Urbana?

Ans. I don't know positively, except what Mr. Barr may have told me.

Int. 10. Do you know how many machines were made at Maroa, Illinois?

Ans. I do not.

J. D. BENNETT.

97 *Examination of Frank Wicks, on the part of the complainant, commenced this second day of July,* 1866.

Int. 1. State your name, age, and place of residence.

Ans. Name, Frank Wicks; age, 33 years; residence, Upper Sandusky, Wyandotte co., Ohio.

Int. 2. Do you know Finley F. Fowler, the complainant in this suit? If yea, how long, and what are your business relations with him?

Ans. I have known him nearly two years. I am a partner of his in the introduction, selling, and general business in the way of patents jointly.

Int. 3. Are you familiar with Mr. Fowler's patent hay-stacking machine as constructed under his reissues Nos. 1869 and 1870?

Ans. I am.

Int. 4. How extensively has Mr. Fowler been engaged in constructing and selling such machines and patent rights?

Ans. In making, constructing, and selling machines, since I have been engaged with Mr. Fowler or have known him, we have
98 constructed for sale 400 for this reason, and upon an average previous to that each year from 250 to 300.

Int. 5. State, if you know, whether Mr. Fowler as patentee in those patents named has an established price in the market for a patent right, or what is called a patent fee for the use of such machines or for a license to make and sell, upon and for each machine. If yea, state your means of knowing the same.

Ans. He has an established price of fifteen dollars for an individual farm right, and ten dollars as a license fee to large manufacturers on each and every machine, where they manufacture by quantity. I know personally of a man who was so licensed by Mr. Fowler just before I became associated with him. I also know of his selling farm rights.

Int. 6. Has Mr. Fowler an established estimated fee upon the machines which he manufactures and sells as a part of the selling price of such machines? If yea, state what it is.

Ans. It has always been estimated by Mr. Fowler since I
99 have known him, in his calculations in establishing the price of his machines, to count his patent fees at the rate of fifteen dollars in the estimate in the established retail price of each machine. The pitching machine, being an implement of great value to the farmer as a labor saver, and going into the hands of but few of the large number of farmers in our country, and being a machine that when once purchased, with care, will last an individual his natural life. It is not like other machines that will wear out every four or five years, and have to be supplied with a new one. Hence we value our patent fee on our machine in proportion to its durability and great labor-saving qualities.

Int. 7. Where is the manufacture of these machines by Mr. Fowler carried on?

Ans. At the Wyandot Agricultural Works, Upper Sandusky, Ohio.

Cross-examination of Frank Wicks, commenced this 2d day of July, 1866.

100 Int. 1. Have you known of any license being granted to manufacturers for less than ten dollars, or for farm rights for less that fifteen dollars, by Mr. Fowler?

Ans. I have not.

Int. 2. How many rights has he sold at that price?

Ans. I do not know personally; agents are out.

Int. 3. How many were sold at that price?

Ans. I have known only two or three cases. We have given our attention to the manufacturing and furnishing of machines. There may have been 50 or 1000 in Wisconsin, for ought I know.

Int. 4. When did you first establish this patent fee?

Ans. With me and Mr. Fowler about May 1st, 1865, and prior to that date about 18 months previous by Mr. Fowler himself and prior partner, Mr. Wood.

Int. 5. Do you personally know the latter clause of that answer to be true?

Ans. I do, as stated by Mr. Fowler, and that knowledge I have obtained from his previous partners.

Int. 6. How long have you been in this business with Mr. Fowler?

Ans. Since Februarv, 1865.

101 Int. 7. Did you ever sell a farm or manufacturer's right?

Ans. I never have.

Int. 8. In the introduction and sale by Bennett & Turner of their hay-stacking machine do you consider that you, the complainants, have been injured pecuniarily?

Ans. I think he has.

Int. 9. Have you any forms of licenses used by Fowler & Wicks for manufacturer's and farm rights? If yea, can you produce them?

Ans. I have, and attach them hereto, designated as Exhibits Nos. 3, and 4 and 5.

Int. 10. When were these printed?

Ans. The new ones about three months ago. I do not know the time of the old ones.

Int. 11. Can you produce any old ones?

Ans. I do not know.

FRANK WICKS.

Subscribed before me this 2d day of July, 1866.

H. W. BISHOP, JR., *Master, &c.*

Further examination adjourned to Tuesday, July 10th, at 10 a. m.

H. W. BISHOP, JR., *Master.*

102 *Directions for making hay-pitcher—size of timber, and directions for making Fowler & Wicks' hay-pitching machine.*

Two runners 2½ by 8 inches, 12 feet long; one centre bed, 3 by 10 in., 10 feet 8 in. long; two end beds, 3 by 6 in., 10 feet 8 in. long; centre pole, 5 by 5 in. 26 feet 9 in., clear of tennon to top when spliced; long braces, 2½ by 5 at bottom and 3 by 2½ at top, 18 feet 5 in. long; two pieces 2½ in. square, 10 feet 2 in. long, for inverted braces; two pieces for revolving cross-bar, each 3 in. square, one 10 feet long, one 9 feet, spliced at the centre; four braces, 1 in. by 4 in., 4 feet long; one board 8 in. wide at the centre, tapered to each end, 5 feet long.

Number and size of bolts required:

9 x 5½	inch	bolts,	size	¾	inch:	8 x 10½	inch	bolts,	size	⅜	inch.
8 x 4	"	"	"	"	"	4 x 11	"	"	"	"	"
2 x 2	"	"	"	"	"	4 x 4½	"	"	"	"	"
2 x 7½	"	"	"	"	"	8 x 4 inch pins; 4 x 4½ inch pins.					

103 *Exhibit* 3, *to Frank Wick's testimony, H. W. Bishop Jr., Master, &c.*

For arranging rope and pulleys see cut. Stamp or mark plain each machine:

["Patented ————————"]

For putting together: First put the base of frame together and pin or bolt, then raise same and enter centre pole; then put the braces in the cap; then bolt top braces and revolving bar together and fasten them by pin. Arrange the rope and raise.

FOWLER & WICKS.

104 [Picture of machine.]

[Rev. stamp. F. & W., Jan. 1st, 1866.]

WYANDOT AGRICULTURAL WORKS,
Upper Sandusky, Wyandot County, Ohio.

Article of agreement, made and entered into this first day of June, 1866, between Fowler & Wicks, of the county of Wyandot, and State of Ohio, of the one part, and John Hartel, of the county of Waukesha, of the other part.

We of the first part hereby appoint John Hartel, of the second part, our agent in the counties of Waukesha, and State of Wisconsin, for the sale of the machines and individual rights mentioned below, and agree that he shall receive a commission of fifteen per cent. on the hay pitcher, hay gatherer, horse hay pitchfork, and elevating power; also on rights when accompanied with castings, and the sum of five dollars on all individual or farm rights without castings.

Price list.

Fowler & Wicks' hay pitchers, with long-handled fork and rope	$75 00
Fowler & Wicks' hay pitcher, with Wicks' self sustaining fork	85 00
105 Fowler and Wicks' hay gatherer	50 00
Wicks' elevating powers	40 00
Wicks' horse hay fork, "wooden head," with pulleys and hooks	16 00
Wicks' horse hay fork, "iron head," with pulleys and hooks	18 00
Individual rights, with castings	25 00
" " without castings	15 00

Shop prices, transportation paid by purchasers.
Terms of sale : cash on delivery of machines.

Exhibit 4 *to Frank Wicks' testimony, H. W. Bishop, Master, &c.*

Duty of agents.

1. To canvass thoroughly, in person or by deputy, before selling time of the machines, by visiting hay-raisers, and by distributing handbills and circulars to make the machines generally known.

2 To see that machines sold by him are properly put together and properly used.

3. To sell strictly upon terms given by us, and to correctly fill the orders given by us.

4. At expiration of agency, on demand being made, personally or by authorized agent, to deliver at his place of residence, free of charge, all unsold machines.

5. To exhibit machines at all agricultural fairs in the territory canvassed by him.

106 6. To keep all machines unsold after the time of selling under cover. Agents will be held accountable for all damages caused by their neglect to machines while in their care.

7. To do the above and following for and in consideration of the commission hereinbefore named.

8. To answer promptly all communications from us or our agent, and to make report to us at the end of each month of the number and kind of machines he holds orders for, and also the names of persons sold to, so that we may be the better prepared to meet the demand.

9. To attend promptly to any complaints made on account of the machines not doing good work, and see that they are put in good order and properly used.

10. To remit money only by draft on New York, or by express.

11. To forward money promptly.

12. Neglect or refusal to comply with any of the foregoing " duties" will be accompanied with an immediate change of agency.

13. To see that all papers are stamped according to law.

Agents are authorized to warrant all machines well made, of good material, and capable of doing good work with proper usage.

107 In witness whereof, we have, to this and one other article of the same tenor and date, subscribed our hands and seals this first day of June, 1866.

[SEAL.] FOWLER & WICKS.
[SEAL.] JOHN HARTEL.

108 *Exhibit 5, to Frank Wicks' testimony, H. W. Bishop, jr., License.*

This agreement and license, made this day of 186 , by and between of the first part, and of the second part, witnesseth, that whereas letters patent were issued by the United States to for bearing date and numbered master. And whereas the said part of the second part, acknowledging the novelty and utility of said invention and the validity of said patent, desirous of acquiring the right to under and according to said patent. Now these presents witnesseth that said part of the first part, for and in consideration of the sum of dollars, to paid, by the said part of the second part, the receipt whereof is hereby acknowledged, ha sold and granted, and do hereby sell and grant

109 unto the said the right, license and privilege to under and according to said letters patent for, during, and unto the full end of the term for which said letters patent are granted.

The right, privilege and license hereby granted is not, nor is any part of it to be transferable or assignable by the part of the second part; and it is not the intention to give to said part of the second part, any right or privilege except what shall personally exercise, and not to have power or right to in any way transfer or impart to another, or others, the right or privilege hereby granted; and the part of the second part hereby covenant and agree , as a condition of the enjoyment of the right ahd privilege hereby granted, to stamp, print, or otherwise mark, in a conspicuous manner, on each and every manufactured by under said letters patent, the words and figures as follows, to wit: ["patented "] And it is understood and agreed by the parties hereto, that the covenants and agreements herein of the part of the first part shall apply to and be binding upon heirs, executors, administrators and assigns, and that the covenants and agreements herein, of the part of the second part, shall apply to and be binding upon .

In testimony whereof, the parties have hereunto set their hands and affixed their seals, the day and year first above written, in presence of

110 *Exhibit No. 6.—Frank Wicks' deposition.*

Will it pay?

To this we answer yes. It will clear its cost to any farmer in five days' work, at the present prices of labor, thus: The pitching machine is capable of stacking 30 acres of hay per day, or forty-

five tons with all ease; labor required is two men, one boy, and one horse. Thus—

One hand to pitch	$2 00
" to board	40
" to stack	2 00
" to board	40
One boy to ride	75
" to board	40
One horse	50
	$6 50

Total cost for stacking forty-five tons of hay by a machine in one day.

Now for the cost of the same work done by hand labor. We calculate three men to pitch and stack fourteen tons per day by hand, and it is more than farmers (generally speaking) get done in one day. It will require 6 2-5 days' pitching and 3 1-5 days' stacking. Thus:

Six days' work, pitching		$12 00
	board	2 40
111	Two-fifths of a day's work	96
	Three days' work stacking	6 00
Board		1 20
One-fifth of a day's work		48
	Total	$23 04
Deduct work done by machine		6 45
Made and saved in labor by use of machine in one day		$16 59

Cost of machine $75 00.

You discover it has paid for itself in a trifle over four and a half days' work. Thus: $16 59 multiplied by $4\frac{1}{2}$=$74 65.

Is there a saving made by the use of machinery other than the saving of labor?

Yes. No hay is so good as that which is saved without rain or dew, or being scorched by the sun or bleached by the weather.

The mowing machine leaves your grass most perfectly spread and in shape to dry in the least possible time. As soon as dry start your machine, and you have your hay in stack with the same labor, in less time than you can possibly cock it, and in the best possible condition. You can easily put fifteen or twenty tons in a rick, no
112 longer or larger than the machine will readily reach in every part; thus making and saving, which we propose now to estimate.

There is in a rick of 20 tons about 800 square feet, surface measure, liable to injury to the depth of six inches, making 400 cubic feet injured hay. There is in eight two-and-one-half ton stack about

2,400 feet surface measure, making 1,200 cubic feet injured hay, thus saving by the use of the machine 800 feet of hay in a rick of twenty tons, and counting 288 cubic feet to the ton, makes two tons and 224 cubic feet, almost three tons of hay saved by building ricks in place of stacks, worth at least $14 00, and in a full day's stacking of forty-five tons a saving of $31 50; add to this the saving of labor, $16 59, and you have $48 09 made and saved in one day by the use of your pitching machine.

If we have worked from a proper basis, of which every man is invited to judge for himself, we find from calculations made that it costs just 27¾ cents per ton for man and horse labor to stack hay from the winrow by use of machinery; whilst it cost $1 55 per
113 ton to do the same work by hand labor. Thus you will perceive that you save just 560 per cent. by machinery over hand labor.

We will add that hay costs the farmer on the above basis, per acre, including land rent, as follows:

Land rent	$2 00
Mowing	50
Making into winrows	19⅓
Hauling	22⅔
Stacking	21½
Total for 1½ tons of hay	$3 13⅓

Or $2 08 per tun.

114 U. S. Cir. Ct., N. D. Ills.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } In chancery. Before Bishop, master.

It is hereby stipulated and agreed on the part of the plaintiff, that the defendants shall have the right to avail themselves of any objection they may wish, as to the competency of the testimony taken before the master by the plaintiff on the second day of July, A. D. 1866, in the above-entitled cause.

S. A. GOODWIN,
Of Counsel for Comp't.

Dated July 10, 1866.

115 U. S. Circuit Court, nor. dist. of Illinois.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } In chancery.

Deposition of witnesses taken by consent of parties before T. Howland Thompson, notary public, to be used on the hearing and reference of the above-entitled cause on the part of the defendants, on the 10th day of July, A. D. 1866, the said parties being present; the said complainant, by S. A. Goodwin, esq., and the said defendants by James A. Cowles, esq.

Charles E. Whitman, a witness of lawful age, produced, sworn, and examined on the part of the defendants, testified as follows:

Interrogetory 1st. What is your name, age, residence, and occupation?

Answer. My name is Charles E. Whitman; age, 28 years; I reside in Chicago, and am a merchant.

116 Int. 2. Are you acquainted with the hay-stacker of the plaintiff?

Ans. I am to some extent.

Int. 3. What has been your leading business since you have been in business?

Ans. I have been connected with the manufacture of agricultural implements.

Int. 4. Do you know what is usually paid to inventors as a royalty upon their inventions. I mean agricultural implements particularly?

(Objected to by the compl't as incompetent.)

Ans. I have been connected with transactions of that kind where the patent fee or royalty varied from five to ten per cent.

Int. 5. What, in your judgment, would be a fair royalty for manufacturing the plaintiff's machine?

(Objected to by comp't on same ground as last question.)

Ans. If I was the owner of the patent or manufacturing, I should think five dollars would be a fair price on each machine.

CHAS. E. WHITMAN.

117 Frank Wicks, a witness recalled by the defendants, deposes and testified as follows:

Int. 1. What does Mr. Fowler retail his hay-stackers for?

A. He retails them at seventy-five and eighty-five dollars complete.

Int. 2. What does he wholesale them for?

Ans. He wholesales them less a commission of fifteen per cent. from the selling price.

Int. 3. What is the expense, or what do these machines cost to manufacture?

(Objected to by compl't, as the evidence called for is incompetent.)

Ans. We consider that they cost us when delivered on board of

the cars at our works complete, as we are manufacturing them this season, forty dollars each; that is the net cost money expended in getting the machine up. This includes the fork and rope.

Int. 4. What is the value of the fork and rope?

Ans. We sell the fork and rope for ten dollars with the machines.

118 Int. 5. Then what do you sell the machine for without the fork and rope?

Ans. That is according to the way and style in which it is finished—from sixty-five to seventy dollars.

1st cross-int. Does your estimate given of the cost of the machine include interest on the capital invested in the works, taxes or insurance? And if not, what does it include?

(Objected to.)

Ans. It does not include those things. It includes costs of material, labor, and workmanship.

2d x-int. Do you know what amount of capital is invested by Mr. Fowler in the manufacturing works for the manufacture of his machines? and if so, state what it is.

Ans. We have invested in works, machinery, and material, the land upon which the works are erected, sixty thousand dollars, including machines manufactured and on hand.

3d x-int. Have you since the commencement of this suit become a partner with Mr. Fowler in the manufacture of hay-stacking

119 machines? and if so, when?

Ans. I was a partner of Mr. Fowler's, together with Fowler & Co., prior to this suit, but with Mr. Fowler individually since last September, by the name of Fowler & Wicks.

X-int. 4. State if you know what the usual amount of taxes and insurance on that establishment has been.

Ans. I do not know positively. I could tell by referring to the books.

5th x-int. Are you familiar with the hay-stacking machine of Finley F. Fowler, as constructed under his reissued patents Nos. 1869 and 1870, and shown in the model now before you marked "Complainant's Exhibit F," "Deposition of W. G. Randall, P. A. Hoyne, U. S. Com'r, Nov. 30, 1865?" If yea, have you seen the same worked, and do you know its value and utility as a labor-saving machine?

Ans. I am. I have seen the same worked, and have worked it many times myself, and I know its value as a labor-saving machine, capable of saving its cost to the farmer in the saving of hay and labor every twenty hours it is worked to its full capacity.

120 6th x-int. Do you regard the said machine as valuable and useful as a labor-saving machine, and have you made an estimate of the saving made by it in labor and in the preservation of hay? and if so, state the same, in comparison with the same work in the field by hand.

(Objected to as incompetent.)

Ans. I do regard the said machine as valuable and useful as a labor-

saving machine. I made an estimate and have it in printed form, made from the machine when at work. I produce and make a part of my deposition this estimate.

(The paper produced by the witness is hereto annexed, marked "Exhibit No. 6, Frank Wicks' deposition.")

That estimate being made at only one-half of the full capacity of the machine when worked by experienced hands.

7th x-int. From your experiance in the department of agriculture referred to, that is stacking hay or making it from the field into ricks, is the calculation of saving made in Exhibit No. 6 a just and fair statement of the value and utility of Fowler's hay-stacking machine, and under, rather than over, the actual saving by means of such machine?

121 Ans. It is a just and fair calculation made by myself and experianced farmers, and considered below its full value when worked to its full capacity.

(So much of this answer as refers to others than the witness is objected to by deft's.)

8th x-int. How long have you personally been acquainted with the actual working of the said machine, and what has been your experience as to its capacity? State fully all you know on the subject.

Ans. I have been acquainted with the actual working of the machine for three years. I have used it myself, and have pitched from seven to eight tons per hour, and have seen other men work it that have pitched ten tons per hour by the watch. I also have knowledge of a farmer in Ohio stacking twenty-five acres, or the product of twenty-five acres, in one afternoon by the use of these machines.

(Deft. objects to so much of the answer as pertains to the farmer in Ohio.)

9th x-int. State how you came by that knowledge.

122 Ans. By being shown the amount of land cleared and the amount of hay in stack in the evening of said day, estimated by the owner of the land, and judged by myself to be fully twenty-five acres.

(Objected to by defts.)

FRANK WICKS.

James George, a witness produced, sworn and examined on the part of the defendants, deposed as follows:

Int. 1. What is your name, age residence, and occupation?

Ans. My name is James George; age 35; my residence is in Chicago, and my occupation is that of manufacturing threshing machines, corn-planters, and cultivators.

Int. 2. How long have you been engaged in manufacturing agricultural impliments?

Ans. About eleven years.

Int. 3. Are you acquainted with the price usually paid by manufacturers to patentees and inventors, as a royalty for the manufacturing of their machines in the department of agriculture?

123 (Objected to by comp't, as the evidence asked for is incompetent.)

Ans. I am with a great many machines.

Int. 4. Have you ever seen, or are you acquainted with the hay-stacker manufactured by Fowler & Wicks, of Upper Sandusky, Ohio?

Ans. I have seen it, but know nothing of its operation.

Int. 5. What, in your judgement, would be a fair patent fee for the manufacturing of this stacker?

(Objected to for same reason as before.)

(Question withdrawn by def't's.)

Int. 6. On a machine that retails from sixty-five to seventy-five dollars, what per cent. of the retail price would be a fair patent fee to be paid for the knowledge of manufacturing?

(Objected to by compl't, as the evidence called for is incomplete.)

Ans. I should say five per cent.

Int. 7. Do you manufacture any machines at present, upon which you pay a royalty? If yea, state what the machines are, what
124 they retail for, and what royalty you pay the patentees or inventors for the privilege of manufacturing.

(Objected to by compl't, on the ground that the evidence called for is incompetent.)

Ans. We manufacture a combined corn-planter and cultivator, known as the Doan machine, the retail price of which is $85.00, the patent fee on the same is $3.50; we also manufacture a machine known as Barker's self-bagging and regulating machine, a attachment to a threshing machine, which retails for forty-five dollars; the royalty is two dollars; we manufacture a horse-power, known as the Carey power, which retails for $160, and on which we pay six dollars patent fee. I am not sure whether it is five or six, but it is one or the other, I know; we also manufacture an attachment to a horse-power, known as Henley's equalizer, which retails for $35; we really don't pay any fee on that; we own that.

JAMES GEORGE.

125 Samuel K. Clexton, a witness produced, sworn, and examined on the part of the defendants, deposed and testified as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Samuel R. Clexton, age 29; I reside in Chicago, and I am in the agricultural business as one of the firm of J. W. Becker & Co.; we are engaged in the manufacture of agricultural implements.

Int. 2. Do you manufacture at present any agricultural machine upon which you pay a royalty? If yea, what is the machine, what is the retail price, and what royalty do you pay?

(Objected to by compl'ts on ground that the evidence called for is incompetent.)

Ans. We do; we manufacture a hay loader, Foust's patent, which we retail at sixty-five dollars, and pay a royalty of three dollars.

SAMUEL R. CLEXTON.

126 Philetus W. Gates, a witness of lawful age, produced, sworn and examined on the part of the defendants, deposed and testified as follows :

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Philetus W. Gates; age 49; I reside in Chicago, and I am a steam engine builder.

Int. 2. Are you familiar with the percentage usually paid by manufacturers to patentees and inventors for the privilege of manufacturing their patented machines?

(Objected to by the compl't, as the evidence called for is incompetent.)

Ans. I am somewhat familiar with it.

3. What is the percentage usually paid by manufacturers on the retail price of machines?

(Objected to by compl't on same ground as last question.)

Ans. I think that varies according to the monopoly that a man has in his patent right.

Int. 4. Do you manufacture machines upon which you pay a royalty to the patentees or inventors? If yea, what percentage do you
127 usually pay on the retail price?

(Objected to by compl't on ground that the evidence called for is incompetent.)

Ans. We do manufacture patent machines, on which we pay about five per cent.

Int. 5. Are you the patentee of any machines which are being manufactured by other manufacturers? If yea, what per cent. do you receive as a royalty on the retail price?

(Objected to by compl't for same reason as last question.)

Ans. I am the patentee of different machines that are manufactured by other manufacturers; I receive a royalty of about five per cent.

P. W. GATES.

James D. Bennett, one of the defendants, called on the part of the defendants and duly sworn, deposed and testified, as follows :

Int. 1. How far had you progressed with the work on your machines on the 14th of February, 1865?

Ans. We commenced preparing in November, 1864; we bought the greater part of our lumber, hired help, prepared a shop, and done a considerable amount of work on the machines; shipped some machines before the 14th of February, 1865.

128 Int. 2. How many of your machines that have been sent from the shop remain unsold?

(Objected to by compl't on the ground of immeteriality.)

Ans. I know of fifteen unsold.

Int. 3. What was the average cost of your machines?

(Objected to by compl't as irrevelent, immeterial, and improper.)

Ans. About thirty dollars.

Int. 4. What was the price at which you sold them?

(Objected to by compl't for same reasons as last question.)

Ans. Sold them at various prices, from twenty dollars to thirty-five dollars each. That means the stacker alone, and does not include the fork and rope or any extra addition.

Cross-examination.

x-int. 1. You say that some machines were shipped before the 14th of February, 1865. Were there any other machines so shipped than those mentioned on page 213 of the book referred to by Mr. Barr in his testimony, to wit: "Dec. 26. C. L. Whitcomb, Maroa, 1
129 stacker; 1865, June 20. Bennett & Turner, Onarga, stacker 1"?
And are those the machines shipped to which you refer in your direct examination?

Ans. There were no other machines shipped that I now remember of?

J. D. BENNETT.

The complainant here offers the testimony taken in this cause and on file among the files of this cause.

STATE OF ILLINOIS, *Cook County, City of Chicago, ss:*

I, J. Howland Thompson, a notary public in and for the city of Chicago, in said county and State, do hereby certify that the foregoing depositions were taken before me on the 10th day of July, A. D. 1866, to be used and read in evidence on the hearing and reference of this case mentioned in the caption thereto; that the witnesses were duly sworn and their testimony reduced to writing by
130 me, and subscribed by said witnesses in my presence.
In testimony whereof, I have hereunto set my hand and notarial seal, this 11th day of July, A. D. 1866.

J. HOWLAD THOMPSON,
Notary Public.

[Rev. stamp. J. H. J., 11 July, '66.]

Endorsed: Filed Nov. 12th, 1866. Wm. H. Bradley, cl'k.

131 And on this day, to wit, the twenty-fourth day of November, A. D. 1866, came Messrs. Coburn & Marrs, and filed in the said clerk's office their appearance as solicitors for the said defendants, Turner & Bennett, in the said entitled cause, which said appearance is in the words and figures following, to wit:

U. S. Circuit Court, northern district of Illinois.

Appearance.

FINLEY F. FOWLER
vs.
SETH TURNER and JAMES D. BENNETT. } In chancery.

We hereby enter our appearance as solicitors for the defendants in the above-entitled cause.

COBURN & MARRS.

Endorsed: Filed Nov. 24th, 1866. Wm. H. Bradley, cl'k.

132 And on this day, to wit, the twenty-fourth day of December, A. D. 1866, came the said defendants, by their solicitors, and filed in the said clerk's office their exceptions to the master's report in the said entitled cause, which said exceptions are in the words and figures following, to wit:

United States of America, northern district of Illinois. In the United States Circuit Court for said district.

Exceptions by def'ts.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } In chancery.

And now come the said defendants, by Coburn & Marrs, their solicitors, and except to the master's report filed in this cause, and most especially do these defendants except to all that part and so much of said report as charges these defendants for the acts committed by other persons than themselves, alleging that the acts so done by others as found by said report, are not properly, legally, or equitably chargeable upon these defendants, and were im-
133 properly alleged in the bill of complaint, and that the testimony taken upon said issue ought in law to be excluded.

JAMES D. BENNETT.
SETH TURNER.
By COBURN & MARRS, *Sol'rs.*

Endorsed: Filed Dec. 24, 1866. Wm. H. Bradley, cl'k.

134 And on this day, to wit, the seventeenth day of January, A. D. 1867, came the said defendants, by their solicitors, and filed in the said clerk's office their application to open the decree, &c., in the said entitled cause, which said application, &c., is in the words and figures following, to wit:

United States of America, northern district of Illinois. In United States Circuit Court for said district.

Application by def'ts to open decree, &c.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } In chancery.

And now come the said defendants, by Coburn & Marrs, their solicitors, and move this honorable court to open the decree heretofore rendered in this cause, and pray for leave to file the amendment or supplement to their answer heretofore filed in this cause, herewith submitted, and to take testimony upon the issues raised by said amendment, and pray that a rehearing may be had in the
135 cause, and for such other relief as to the court may seem agreeable to equity and good conscience.

And for cause these defendants show unto your honors that the specific matters set up in the original answer of the same general character as those set up in the proposed amendment were found, upon careful examination, not to anticipate the alleged invention of the said Finley F. Fowler, in his said reissued patents in his bill of complaint mentioned, described, with the exception of the machine alleged in said answer to have been used by Albert D. Bishop, which, although bearing an analogy to the complainant's machine, would not alone have availed these defendants, and therefore no proofs of the matters in said answer set forth were put in.

These defendants further show, as cause for the granting of the foregoing motion, that they have discovered all the matters and things set forth in their proposed amendment, with the exception of the use of said machine by the said above-named
136 Albert D. Bishop, since the entering of the decree in this cause, and since the coming in of the master's report; and that they do verily believe said facts so set forth in the said amendment are true, and constitute a good and valid and complete defence in this cause.

These defendants further show, as cause for granting this motion, that they had no means of ascertaining the facts set forth in their proposed amendment relating to the prior use of said alleged invention, prior to the entering of said decree, within their knowledge, and therefore could not avail themselves of such matters at an earlier day.

JAMES D. BENNETT.
SETH TURNER.
By COBURN. MARRS.
Their Solicitors.

137 STATE OF ILLINOIS, *County of Cook, City of Chicago, ss:*

I, Seth Turner, one of the above-named defendants, having been first duly sworn on oath, depose and say, that the matters and things set forth in the amendment to the answer in this cause herewith submitted are true in substance and in fact, and constitute a good and valid defence to all and singular the matters and things charged upon these defendants in the said complainant's bill of complaint in this cause.

This affiant further says, on his oath aforesaid, that at the time of the rendition of the decree in this cause, and at all times prior thereto, these defendants were utterly ignorant of any of the facts set forth in their proposed amendment, or of any facts of the same nature; excepting so much of said amendment as relates to the prior use of the alleged invention by Albert D. Bishop, which matter was set forth in the original answer in this cause.

138 This affiant further says, on his oath aforesaid, that these defendants were still in ignorance of the facts set forth in said amendment, except as aforesaid, until about six weeks ago, and were except as aforesaid wholly ignorant of any facts of the same nature as those set forth in said proposed amendment.

This affiant further says, on his oath aforesaid, that all the allegations contained in the original answer, wherein the prior use of said alleged invention of Finley F. Fowler, as specifically set forth, except as aforesaid, were made upon information and belief, and that subsequent investigations relative to said matters convinced these defendants and their counsel that the machines thus referred to did not anticipate the invention of the said Fowler, and that the machine used by the said Bishop would not alone avail these defendants in this cause, and therefore no proofs touching said matters were put in by these defendants.

This affiant further says, on his oath aforesaid, that these
139 defendants still believe that all proofs, upon the allegations of specific use in their said original answer contained, would not have availed them upon the hearing in said cause heretofore had.

This affiant further says, on his oath aforesaid, that these defendants especially rely in their defence upon the allegations of prior use in public of the alleged invention of the said Finley F. Fowler, and that said matters, so alleged in their said proposed amendment, were until about six weeks ago, and after the coming in of the master's report in this cause, utterly unknown to these defendants, and that these defendants had, until then, absolutely no clue to or means of ascertaining such matters.

This affiant further says, upon information and belief, on his oath aforesaid, that the models herewith exhibited, marked Nos. 1, 2, 3, 4, and 5 respectively, are exact counterparts of some of the machines which are set forth in said proposed amendment as having
140 been in public use and on sale prior to the alleged invention by Finley F. Fowler of the machine described in his reissued patents in the bill of complaint set forth; and that they had no knowledge of said machines or either of them, and no means within their knowledge of acquiring a knowledge of the same until about six weeks ago, as aforesaid; and could not until now set forth said facts in their answer, or offer them in evidence in this cause.

This affiant further says, upon his oath aforesaid, that the model herewith exhibited and marked number 6, is an exact representation of the machines made by the defendants, which were decreed in the decree in this cause to be an infringement upon the reissued patent of the said Finley F. Fowler in his said bill of complaint mentioned.

This affiant further says, on his oath aforesaid, that the models herewith submitted, marked 1, 2, 3, 4, 5, before mentioned, are the models referred to by similar numbers in the annexed affidavits of Ralph McKinney, Peter Stewart, and L. G. Clemons.

141 This affiant further says, on his oath aforesaid, that the knowledge of the machine described in "Theatrum Machirum varium," published in Leipsic, in 1725, A. D., as set forth in said proposed amendment, only came to the these defendants on the 8th day of January, 1867, and was ascertained, as these defendants are informed and believe, only after a long and careful search through

the volumes in the public library in the Patent Office, at Washington.

SETH TURNER.

Subscribed and sworn to before me on this 15th day of January, A. D. 1867.

[SEAL.] JAMES M. MARSHALL,
Notary Public.

142 STATE OF ILLINOIS, *County of Will, ss:*

Personally appeard before the undersigned, a notary public in and for the city of Wilmington, in the county and State aforesaid, Ralph McKinney, who being duly sworn according to law, deposes and says that about the year A. D. 1835 he resided in the city of Auburn, in the State of New York; that then and there resided Amasa Curtis, a master builder, and Isaac Sloon also a master builder, with whom the deponent was personally acquainted; and that said Curtis and Sloon did build a block of buildings now known as the "Seward" or "Exchange Block," and did use for raising the building material with which said block is built a machine which in all its essential features was the same as the model accompanying this deposition, and marked "Exhibit No. 1," having the inverted pyramidal frame, with a revolving centre post resting upon the base of the frame below, with a rope passing through pullies at each end of the cross bar at the top, and passing through a pulley or match block be-
143 low; to which was attached a mule for raising the weight attached to the other end of the rope; and that said machine differed in no point in its manner of working from exhibited, marked No. 1. And this deponent further says, that in the year 1847 or 1848, he resided in the city of Lockport and State of New York; that then and there resided one Andrew Buel, a contractor upon the enlargement of the "Erie canal," and that said Buel and others interested with him, did then and there use a machine for raising stone and gravel from said canal, which in essential features was like the model exhibited herewith, and marked "Exhibit No. 2;" said machine having two pyramidal frames, one turning upon the other, a rope to one end of which was attached a box for the stone or gravel; thence running to a block at one end of the cross bar of the upper pyramidal frame; thence running across to a pulley block at the opposite end of the cross bar; thence to a pulley block at the base of the lower frame, near which a horse was attached, which raised the load by walking off in a straight line; and that said
144 machine landed the stone or gravel upon the bank of the canal by the upper pyramidal frame revolving upon the other, and that said revolving was done by the same power that raised the weight, no auxiliary power being used, and that the box was pulled back to the point for receiving another load by hand, by means of a rope attached thereto; and deponent further says that about the year 1850 he resided in the city of Auburn, aforesaid, and was then in the employ of one Leonard Chaterdon, who then and there

resided; and that deponent assisted to build the machine, a model of which accompanies this deposition, and marked "Exhibit No. 3," and that said machine was then and there used by said Chaterdon and others for raising material for building a block of buildings known as the "Stanford Block," said block being situated on North street, in said city of Auburn. He further says, that said machine did have the upper and lower pyramidal frames; the upper pyramidal frame having a revolving centre post resting upon the
145 base of the lower pyramidal frame as shown; the rope passing over shieve wheels in the ends of the cross bar of the upper pyramidal frame, and through a pully or match block at the base of the lower pyramidal frame as shown; and that the power used was a horse attached to the end of the rope nearest the match block, and the weight to be raised was attached to the other end of the rope, and that said machine differed in no essential feature from the model shown and marked "Exhibit No. 3;" and further deponent sayeth not.

RAILPH McKINNEY.

Subscribed and sworn to before me at my office in Wilmington, this 30th day of November, A. D. 1866.

Attest the seal notarial:

[SEAL.] JAMES L. YOUNG,
Notary Public.

[5-ct. U. S. rev. stamp.]

146 STATE OF ILLINOIS, *County of Will, ss:*

On this fifth day of December, A. D. 1866, personally appeared before the undersigned, a notary public of the city of Wilmington, in the county and State aforesaid, Peter Stewart, who being duly sworn according to law, deposes and says, that during the years A. D. 1820, 1821, 1822, 1823, and 1824, he resided in the State of New York, and was a contractor on the Erie canal, in said State, in building locks on said canal, at different points from near Utica, New York, to Albany, in the same State; that affiant, while so engaged, did mount and use a certain machine, which he called a "crane," for raising the stone from which said locks were built, the essential features of which were the same as the model herewith exhibited, marked "Exhibit No. 4," said machine having a frame platform with a post or mast in the centre supported by four braces from the platform to said post, as shown in the model, the upper part of said machine consisting of a piece of timber running horizontally across and over the top of said mast, and turning thereon, and
147 marked in the model letter "A," supported by a piece of timber running down the side of the mast from said cross bar, marked in the model letter "B," and a brace running from near the outer end of said cross bar to near the lower end of said perpendicular timber, running down by the side of the mast, and marked in the model letter "C." Said machine had a rope attached to a capstan or windlass; thence running to a match block attached to one side, and near the bottom of one side of the upright mast; thence to

a pulley or shieve wheel on one end of the upper cross-bar, marked letter "A;" thence to a pulley or shieve wheel on the opposite end of said cross-bar; thence to the weight to be raised. The said machine was so constructed that upon attaching the weight to be raised to the end of the rope used for that purpose, and applying the power to the windlass or capstan, the weight would be raised and swung around to a point opposite to the point where the match block was attached to the mast; said machine was mounted on four wheels attached to the under side of the platform for the convenience of chang-
148 ing its position from one point to another while using. The said affiant further deposes and says, that while using said machine he furnished to divers other individuals drawings of said machine, and that many other persons came and took the measurement of his machine for the purpose of constructing the same for themselves, and he verily believes they were made and used by the parties getting the drawings and taking the measurement of the same, as aforesaid.

P. STEWART.

Subscribed and sworn to before me this 5th day of December, A. D. 1866.

Attest the seal notarial:

[SEAL.] JAMES L. YOUNG,
Notary Public.

[3-ct. U. S. postage stamp.]

149 STATE OF ILLINOIS, *Will County, ss:*

On this 5th day of December, A. D. 1866, before me, a notary public in and for the city of Wilmington, in the county and State aforesaid, personally appeared L. G. Clemons, who being duly sworn, according to law, deposes and says, that about the year 1852 he resided in the city of New York and State of New York; that he then and there saw in use a machine for raising heavy weights, the general construction and features of which were the same as the model presented herewith and marked "Exhibit No. 5," the said machine having a pyramidal frame with a cross-bar on the top turning upon or with a centre post, as shown in said model, said machine having a rope passing through a shieve or pulley block at each end of said cross-bar, upon one end of which the weight to be raised was attached, and the other end of the said rope passing to a windlass or capstan upon the base of the frame, to which the power to work said machine was applied. Deponent further says that he verily
150 believes that he can and will furnish the names of the owners and makers of said machine upon a reasonable time being allowed him so to do.

L. G. CLEMONS.

Subscribed and sworn to before me this 5th day of December, A. D. 1866.

Attest, the seal notarial:

[SEAL.] JAMES D. YOUNG, *Notary Public.*

3-ct. U. S. postage stamp.]

151 STATE OF ILLINOIS, *County of Cook, City of Chicago, ss:*

John A. Merriman, of Chicago, in the State of Illinois, having first been duly sworn, on oath deposes and says that he has been a practical machinist and engaged in the manufacture and sale of various kinds of machinery for the past eight years, and has during that time manufactured many "cranes" and "derricks" commonly used for hoisting purposes, and has been familiar with said last-named mechanical contrivances for the past fifteen years, and with labor-saving machines generally.

Deponent further says that he is familiar with patents and patent law, and has taken out several patents for inventions of his own, and has often served as expert on the question of identity or dissimilarity of different machines with reference to patents obtained by others.

Deponent further says that he has examined the reissued patents of the Finley F. Fowler, complainant in this cause, set forth in
152 his bill of complaint, and also a model of a machine constructed according to the specifications of said reissued patents, and fully understands the principle and operation of the same.

Deponent further says that he has examined the models numbered 1, 2, 3, 4, and 5, referred to in the affidavit of Seth Turner, one of the defendants, hereunto appended, and understands the principle of construction and operation of the same; and has also examined the model number 6, referred to in said Turner's said affidavit, and understands its principle and mode of operation.

Deponent further says that all of said models 1, 2, 3, 4, and 5, contain the same mechanical principles and operate in the same manner, and are substantially the same machines in principle, as the machines described in said Fowler's reissued patents aforesaid; and that the said model No. 6, with the exception of the device at the foot of the post to control the turning of the post, is substantially the same in principle and operation as the said models 1, 2, 3, 4, and 5 aforesaid.

Deponent further says that he has examined a certified ex-
153 emplification from the Patent Office, shown him by the defendants, of Figure 1, Tabulum 25 and Tabulum 26 in the "Theatrum Machivarium," a work published at Leipsic, in Germany, in A. D. 1725, and translations of paragraphs 185 and 188 of said volume, being descriptions of the said Figure 1, Tab. 25 and Tab. 26, and find that said cuts and written explanation clearly show and set forth the substantial principles in the construction and mode of operation of the machine described in the said reissued patents of the said Finley F. Fowler; and Figure 1, Tabulum 25, especially is in all substantial and material points identically the same machine as in said reissued patents described.

JOHN A. MERRIMAN.

Subscribed and sworn to before me this 16th day of January, A. D. 1867.

[SEAL.] JAMES M. MARSHALL, *Notary Public.*

Endorsed: "Filed Jan'y 17, 1867. Wm. H. Bradley, Clk."

154 And on this day, to wit, the sixteent[h] es.
D. 1867, in the record of the proceedin[gs] in
said entitled cause, is the following entry, to [wit:]

hancery.

Record.

FINLEY F. FOWLER
v.
JAMES D. BENNETT and SETH TURNER. } Chanc

Illinois, ss:

plified copies of two
wler, February 14th,
mplainant's Exhibits
patent granted F. F.
rked Exhibit "C."
anted F. F. Fowler,
d complainant's Ex-

Now come the parties by their solicitors, complainant to strike from the files the except to the report of the master filed herein on the ber last, coming on to be heard, and it appear had not been filed within the time provided b now on motion of the defendants, by their s them to file the same; and now come on to be to said report of the master, and also the moti open the interlocutory decree heretofore ente

of the file wrapper
etters patent granted
and marked com-

for leave to file an amendment or suppl
155 and for leave to take testimony, and aft
arguments of counsel, the hour of adjou
the further hearing is postponed until *vember 30th*, 1865.

156 And on this day, to wit, the 18th [day] oned.
1867, in the record of the proceedin[gs] in
the said entitled cause, is the following entry,

Record.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } Chanc

of the complainant,
ied and sworn to tell
e truth, in the cause
ows:
e, age, and occupa-

Now come again the parties, by their solici the concluding arguments of counsel upon the fendants to the report of the master filed her the defendants to open the interlocutory decr for leave to file an amendment to their answer proof, the court not being sufficiently advised time to consider.

enty-two years and
I reside at El Paso,
e, James D. Bennett

157 And on this day, to wit, the nineteen
1867, in the record of the proceeding
the said entitled cause, is the following entry,

y, Illinois. Bennett
ast there is where I

Record.

Bennett are engaged,

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } Chanc

together yet, as they
were sinking a shaft

This cause having been brought on to be reserved therein, and upon the report of Henry master in chancery, filed on the twelfth d

srs. Turner and Ben-
, engaged in the sale
rt of machines.

151 STATE OF ILLINOIS, *County of Cook, City of Chicago, ss:*

John A. Merriman, of Chicago, in the State of Illinois, having first been duly sworn, on oath deposes and says that he has been a practical machinist and engaged in the manufacture and sale of various kinds of machinery for the past eight years, and has during that time manufactured many "cranes" and "derricks" commonly used for hoisting purposes, and has been familiar with said last-named mechanical contrivances for the past fifteen years, and with labor-saving machines generally.

Deponent further says that he is familiar with patents and patent law, and has taken out several patents for inventions of his own, and has often served as expert on the question of identity or dissimilarity of different machines with reference to patents obtained by others.

Deponent further says that he has examined the reissued patents of the Finley F. Fowler, complainant in this cause, set forth in
152 his bill of complaint, and also a model of a machine constructed according to the specifications of said reissued patents, and fully understands the principle and operation of the same.

Deponent further says that he has examined the models numbered 1, 2, 3, 4, and 5, referred to in the affidavit of Seth Turner, one of the defendants, hereunto appended, and understands the principle of construction and operation of the same; and has also examined the model number 6, referred to in said Turner's said affidavit, and understands its principle and mode of operation.

Deponent further says that all of said models 1, 2, 3, 4, and 5, contain the same mechanical principles and operate in the same manner, and are substantially the same machines in principle, as the machines described in said Fowler's reissued patents aforesaid; and that the said model No. 6, with the exception of the device at the foot of the post to control the turning of the post, is substantially the same in principle and operation as the said models 1, 2, 3, 4, and 5 aforesaid.

Deponent further says that he has examined a certified ex-
153 emplification from the Patent Office, shown him by the defendants, of Figure 1, Tabulum 25 and Tabulum 26 in the "Theatrum Machivarium," a work published at Leipsic, in Germany, in A. D. 1725, and translations of paragraphs 185 and 188 of said volume, being descriptions of the said Figure 1, Tab. 25 and Tab. 26, and find that said cuts and written explanation clearly show and set forth the substantial principles in the construction and mode of operation of the machine described in the said reissued patents of the said Finley F. Fowler; and Figure 1, Tabulum 25, especially is in all substantial and material points identically the same machine as in said reissued patents described.

JOHN A. MERRIMAN.

Subscribed and sworn to before me this 16th day of January, A. D. 1867.

[SEAL.] JAMES M. MARSHALL, *Notary Public.*

Endorsed: "Filed Jan'y 17, 1867. Wm. H. Bradley, Clk."

154 And on this day, to wit, the sixteenth day of February, A. D. 1867, in the record of the proceedings of said court in the said entitled cause, is the following entry, to wit:

Record.

FINLEY F. FOWLER
v.
JAMES D. BENNETT and SETH TURNER. } Chancery.

Now come the parties by their solicitors, and the motion of the complainant to strike from the files the exceptions of the defendants to the report of the master filed herein on the twelfth day of November last, coming on to be heard, and it appearing that said exceptions had not been filed within the time provided by the rules of the court, now on motion of the defendants, by their solicitor, leave is given them to file the same; and now come on to be heard said exceptions to said report of the master, and also the motion of the defendants to open the interlocutory decree heretofore entered in this cause, and for leave to file an amendment or supplement to their answer,

155 and for leave to take testimony, and after hearing a part of the arguments of counsel, the hour of adjournment having arrived, the further hearing is postponed until Monday morning next.

156 And on this day, to wit, the 18th day of February, A. D. 1867, in the record of the proceedings of the said court, in the said entitled cause, is the following entry, to wit:

Record.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } Chancery.

Now come again the parties, by their solicitors, and after hearing the concluding arguments of counsel upon the exceptions of the defendants to the report of the master filed herein, and the motion of the defendants to open the interlocutory decree entered herein, and for leave to file an amendment to their answer, and for leave to take proof, the court not being sufficiently advised in the premises, takes time to consider.

157 And on this day, to wit, the nineteenth day of June, A. D. 1867, in the record of the proceedings of the said court, in the said entitled cause, is the following entry, to wit:

Record.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } Chancery.

This cause having been brought on to be heard upon the equity reserved therein, and upon the report of Henry W. Bishop, jr., esq., master in chancery, filed on the twelfth day of November, one

thousand eight hundred and sixty-six, and which report bears date on the eighth day of November, in the same year, eighteen huudred and sixty-six, and the said defendants having heretofore made a motion for leave to open the interlocutory decree, entered in this cause on the thirteenth day of June, eighteen hundred and sixty-six, and the court offering to allow said decree to be opened, upon the conditions with which said defendants have failed to comply, and
158 the said defendants having also filed exceptions to said master's report, on hearing Mr. Goodwin for the complainant, and Mr. Coburn for the defendants, it is now, at this day, ordered, adjudged and decreed, that there be deducted from the said amount found due by the said master from the defendants the sum of three hundred and sixty dollars, and that as to the balance of fifteen hundred dollars of the amount reported due by the said master, the said exceptions to his report are overruled, and the said report, save as aforesaid, be ratified and confirmed. And it is further ordered, adjudged and decreed, that the said defendants, James D. Bennett and Seth Turner, to pay unto the said Finley F. Fowler, the complainant, the said sum of fifteen hundred dollars, so reported and adjudged due to said complainant, with interest thereon from the eighth day of November, eighteen hundred and sixty-six, the date of said report, together with the costs of this suit, to be taxed, and
159 that said complainant do have execution therefor, according to the course and practice of this court; and thereupon the defendants, by their solicitor, pray an appeal to the Supreme Court.

On the hearing of said cause the complainant read in evidence the following testimony and exhibits, to wit:

160 UNITED STATES, *Northern District of Illinois, ss*:

Be it remembered that on the first day of December, A. D. 1865, personally appeared Joseph Haas, William G. Randall, and Lester D. Bond, before me, Philip A. Hoyne, a commissioner appointed by the Circuit Court of the United States in and for the northern district of Illinois, in the eighth circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, etc., to testify, and in truth to say, on the part and behalf of the complainant, in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the northern district of Illinois, wherein Finley F. Fowler is the complainant, and James D. Bennett and Seth Turner are defendants.

And the said witness, Joseph Haas, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz.:

161 Circuit Court of United States.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } In chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss*:

The complainant here offers in evidence exemplified copies of two reissued letters patent, granted to F. F. Fowler, February 14th, 1865, numbered 1869 and 1870, and marked complainant's Exhibits "A," and B.

Also, exemplified copy of reissued letters patent granted F. F. Fowler, September 9th, 1862, number 1341, marked Exhibit "C."

Also, exemplified copy of letters patent granted F. F. Fowler, April 17, 1860, numbered 27899, and marked complainant's Exhibit "D."

Also, exemplification from the Patent Office of the file wrapper and contents, and drawing in the matter of the letters patent granted F. F. Fowler, April 17, 1860, numbered 27899, and marked complainant's Exhibit "E."

162 THURSDAY, *November 30th*, 1865.

Examination in behalf of the complainant opened.

Deposition of Joseph Haas.

Joseph Haas, a witness produced on behalf of the complainant, called, and having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in the cause hereinbefore entitled, thereupon testified as follows:

First direct interrogatory. What is your name, age, and occupation, and where do you now reside?

Ans. My name is Joseph Haas; my age is twenty-two years and upwards; my occupation is principally farming; I reside at El Paso, Woodford county, Illinois.

2 int. Do you know the defendants in this cause, James D. Bennett and Seth Turner, or either of them?

Ans. Yes; I know them both.

3 int. Whereabouts do they live?

Ans. Turner lives at Onarga, Iroquois county, Illinois. Bennett lives at Forrestville, not far from Onarga; at least there is where I send his letters.

163 4 int. State in what business Turner & Bennett are engaged, and in what way, if you know.

Ans. I am not certain, but I believe they are together yet, as they always have been. Bennett told me that they were sinking a shaft for coal, at Forrestville.

5 int. State, if you know, whether or not Messrs. Turner and Bennett have been, during the last year, at any time, engaged in the sale and manufacture of machines; and if so, what sort of machines.

Ans. I don't know positively whether they have been engaged in the manufacturing of machines, but they have been engaged in the sale, for they sold machines to me, and delivered. The machines were called hay-stackers.

6 int. State how many of such machines the defendants sold to you, and when and where it was.

Ans. I don't remember the date exactly; it was about last harvest, or before, they sold me fifteen hay-stacking machines, at El Paso, Woodford county, Illinois. The price I was to pay was twenty dollars each.

164 7 int. State whether such machines were actually delivered to you by said defendants, on such sale.

Ans. Yes.

8 int. You have stated that such machines were called hay-stacking machines. Please state how such machines were constructed, and in this connection, please look at the model herewith shown to you, and marked defendants' Exhibit number 1, and state in what respect, if any, the said model shows the construction of said machines, or in what respect it differs from them.

(Obj. Defendants objected to as leading.)

Ans. The machines were constructed exactly like the model number one, except the spiral spring arrangement at the foot of the shaft on the cross-bar of the leader supporting frame. There was a lever arrangement for the same purpose.

9 int. Did you ever use any hay-stacking machines yourself?

Ans. I used one part of a day, just to give it a trial; that is about all.

165 10 int. Irrespective of the price that you paid for these machines, on your special arrangement with the defendants, state what was about the average value of such machines in the market.

Ans. That is more than I know myself.

JOSEPH HAAS.

Subscribed and sworn to before me this 30th day of November, A. D. 1865.

166 *Deposition of Wm. G. Randall.*

William G. Randall, a witness produced on behalf of the complainant, and having been by me first duly cautioned and sworn, on his oath testifies as follows:

1st interrogatory. What is your name, age, and occupation, and where do you now reside?

Ans. My name is William G. Randall. I am an attorney-at-law, by occupation; twenty-six years of age. I reside at El Paso, Woodford county, Illinois.

2 int. Do you know the defendants in this cause, James D. Bennett and Seth Turner?

Ans. I know Mr. Bennett, from meeting him at the Campbell House, in El Paso. I believe I know Mr. Turner. I am not positive.

3 int. State whether or not said Turner and Bennett are engaged in any business together; and if so, what, to your knowledge.

Ans. They have been, during this year, selling the right to manufacture, as well as selling, hay-stacking machines, known as Bennett and Turner's hay-stacking machines.

167 4 int. State, if you know, when, where, and what number of such hay-stackers, within the year mentioned, have been sold or manufactured by said Bennett and Turner.

Ans. I don't know where they were manufactured, but I do know that Bennett and Turner sold and forwarded by express, to be collected on delivery, to Joseph Haas, some of the hay-stackers spoken of. I don't how many. They were sent to El Paso.

5 int. Did you see those machines, so as to know how they were constructed?

Ans. I did.

6 int. Please state what was the construction of such hay-stackers referred to by you, and in this connection, whether you have seen any model substantially showing such construction.

Ans. I will say that the construction was exactly like a model that I saw in the possession of Mr. Bennett, with one exception, that in the ones sold and delivered to Mr. Haas, had instead of the spring at the base of the upright, a sort of lever for the same purpose.

168 The model in the possession of Mr. Bennett, which he offerred as a model of his machines, was in every respect like the one before me, defendants' Exhibit number 1.

7 int. State, as nearly as you can, the number of such machines so forwarded by the defendants to Haas.

Ans. I think about a dozen.

8 int. What was the average value of such machines in the market?

Ans. About forty-five dollars.

9 int. State if you know of any machines being made or sold under Fowler's hay-stacking patent; and if so, when.

Ans. I know that F. F. Fowler sold a machine under his patent to Charles O. McClam, last spring, and was delivered to him at El Paso.

10 int. How was that machine constructed?

Ans. It was constructed like the model now before me, marked complainant's Exhibit "F."

169 *Cross-examination.*

By Mr. Cowles:

1 x-int. How do you know that the machine alluded to in the last preceding interrogatory was constructed after Fowler's patent?

Ans. By the model now before me, and the exemplification I saw this morning.

2 x-int. Do you know where, and who, made that machine?

Ans. I believe it to have been made at Upper Sandusky, Ohio, by F. F. Fowler & Co.

3 int. Why do you say you believe?

Ans. First, from the freight bill of said machine, and from the admission of both parties, F. F. Fowler and Charles O. McClam. I don't know, of my own knowledge, that they made it, only from what I have said.

W. G. RANDALL.

Subscribed and sworn to before me this 30 day of November, A. D. 1865.

Further examination of witnesses was here adjourned till to-morrow, Friday, December 1st, 1865, at 10 o'clock, a. m.

P. A. HOYNE,
U. S. Comm'r.

170 Met pursuant to adjournment, this Friday morning, December 1st, A. D. 1865.

Deposition of Lester D. Bond.

Lester D. Bond, a witness produced on behalf of the complainant, called, and having been by me first duly cautioned and sworn, testified as follows:

1st d. interrogatory. What is your name, age, residence, and occupation?

Ans. My name is Lester D. Bond; reside in Chicago; thirty-six years of age and upwards. I am an attorney-at-law and solicitor of patents.

2 int. State what have been your opportunities and experince in the study and understanding of labor-saving machines, and various mechanical devices; and also what has been your experience in the investigation and examination of patents.

Ans. I worked in summer, for some nine years, as a mechanic, and for eight years last past, I have been engaged in the patent business as attorney, solicitor of patents, and also as an expert in litigated patent cases.

171 3 x-int. Have you examined, and are you familiar with, the the reissued letters patent and specifiations of F. F. Fowler, marked complaint's Exhibits "A & B," in this cause?

Ans. I have examined the exhibits named, and am familiar with them.

4 int. State whether or not, in your judgment, an ordinary mechanic could, from the specification and drawing, construct the machine described in the said reissued specifications respectively.

Ans. He could.

5 int. Look at the model herewith shown unto you, and marked complainant's Exhibit "F," and state whether or not, the same is a

model of a machine described in each of said re-issued specifications and drawings respectively.

Ans. It is, with the exception of two immaterial parts, in the drawing shown. There is one slides for extending the cross-bar at the top, and in the model there is a central pulley or sheave, which is not shown in the drawing. In the drawing the base of the frame appears to be covered, so as to make a platform.

172 6 int. State whether or not the said model is constructed to fairly represent the machine described in said reissued specifications, in plan and principle.

Ans. It is.

7 int. Look at the model now before you, marked defendants' Exhibit number 1, and state in what respect you find the said model identical or different in principle of construction from the machine set forth and described in the re-issued specification and drawing of F. F. Fowler, contained in complainant's Exhibit A and Exhibit "B," before referred to and shown in the said model Exhibit "F," also before referred to, and give your reasons for any opinion you shall express in regard thereto.

Ans. Defendants' Exhibit number 1 has the same base, with upward and inward inclining braces, brought together into a head block, so as to present a pyramidal form, the apex being considerably nearer the upper than the lower end of the entire machine; above this is what Mr. Fowler calls another pyramidal frame inverted.

173 There is a slight difference in the actual construction, as the cross-bar at the top, instead of being horizontal, is placed obliquely, the arm extending upward, being proportionately longer than the other. At the ends of the arms there are pulleys instead of sheaves, as in the Fowler machine, but all of these differences do not amount to a change in the principle of construction, as the pulleys are well-known substitutes for sheaves, and so nearly the same thing that it would hardly require any consideration as to whether they were mechanical equivalents, as the only difference is, the arm forms the block in case sheaves are used.

In number 1 the supporting post turns at the bottom, while in complainant's model "F" the upper frame turns on the top of the post. This difference does not appear to be a difference in principle, and I find that complainant, (in looking at his specification,) provides for the turning of the post. Without this I do not think it would change the principle of construction.

174 I find also in defendants' Exhibit number 1 a spring, catch, or stop to prevent the turning of the post while the hay is being elevated, which I do not find in complainant's model F. Whatever of principle or effect there may be in this, they are in this respect different.

I find also in defendants' exhibit number 1 a cross-bar near the lower end of the braces, to which a pulley is attached by a sliding ring.

I find in complainant's model "F" a similar pulley attached to the base of the frame by a series of hooks, so that the position of this

pulley can be changed from one side to the other, the same as by the arm and sliding ring of defendants' model number 1. The change of position I should say could be effected more rapidly in defendants' model than in plaintiff's. The object and effect, however, is the same in both, and the one simply a mechanical equivalent for the other, and both being substantially the same. The only difference I find then in the principle of construction is the spring, catch, or stop at the bottom of the post which is found in defendants' model number 1. I have not mentioned the raising apparatus, consist-
175 ing of forks, ropes, cords, and the power by which it is operated, as it is evident that they are identical.

8 int. Please state whether the spring catch at the bottom of the post to which you refer is or is not an addition in defendants' model number 1 to the devices found by you described in Fowler's said reissues, and shown in complainant's model "F."

Ans. It is clearly an addition.

9 int. State whether or not you find in defendants' Exhibit number 1, and also in complainant's model "F," the combination of a permanent pyramidal supporting frame, and the revolving cross-bar and its braces, with the central supporting piece for allowing the cross-bar and its braces to turn upon the supporting frame, and whether this in respect the said two models are different or identical in principle.

(Obj. Defendants object to question.)

Ans. I find the combination named in the question in both models, and find it the same in principle in both.

10 int. State whether or not you find in defendants' model
176 number 1, and also in complainant's model "F," in combination with a cross-bar revolving upon an under supporting frame, the so arranging of the sheaves and hoisting tackle that the weight to be raised shall be upon one end of the lever bar, while the power to raise that weight is applied to the opposite end of the cross-bar, and whether in this respect the said two models are different or identical in principle.

(Obj. Defendant objects to question.)

Ans. I find the combination named in both models, and in this respect I find them the same in principle.

11 int. State whether or not you find in defendants' model number 1, and also in complainant's model "F," two pyramidal frames, one placed upon the other, the under frame being upright, and the under one inverted, and the head blocks or apices of both so united as that the upper frame may freely turn upon, whilst it is supported by the lower frame; and whether in this respect the said two models are identical or different in principle.

(Obj Defendants object to question.)

Ans. I find in both models two pyramidal frames, one placed
177 upon the other, the under frame in both being upright, and the upper ones inverted. I find a difference in the form of uniting the head blocks or apices of the two models, but I find them so united that the upper frame may freely turn upon the lower frame,

and be supported by it. The difference in form does not in my opinion produce a difference in principle; I therefore find them both in respect to the parts named in the question the same in principle.

12 int. State whether or not you find in defendants' model number 1, and also in complainant's model F, a machine for elevating hay or other light products, so constructed that the same power employed in elevating said products will also revolve the top of the machine, while the load is being elevated, or when high enough to pass over the top of the stack, and so that it may be raised from either or any side of the machine and deposited on the stack at any other side, and whenever desired, and whether in this respect the said two models are identical or different in principle.

178 (Obj. x. Defendants object to question.)

Ans. In these respects I find the two models the same in principle, as they both operate in the same way and by the same means.

13 int. State whether or not you find in defendants' model number 1, and also in complainant's model F, an elevator or crane, constructed as described by complainant in Exhibit "A," in combination with a device for grasping hay or other light product and depositing it upon the stack, and whether in this respect the said two models are identical or different in principle.

Obj. Question objected to.)

Ans. I find it the same in both, and find them both in this respect identical in principle.

14 int. Have you ever seen a full-sized machine of which complainant's Exhibit "F" is a model, and have you seen a full-sized machine of which defendants' Exhibit Number 1 is a model, and if so, state when and where, and whether you examined the two machines so as to see and become acquainted with the working of each.

179 Ans. I have seen both machines constructed full size. I saw them at the Sanitary Fair held in this city last spring, and examined the workings of the same, and operated the machines in connection with Mr. Goodwin and the parties having them in charge far as could be done in such a place, there being neither horse nor hay present.

LESTER L. BOND.

Subscribed and sworn to before me this 1st day of December, A. D. 1865.

180 UNITED STATES, *Northern District of Illinois, ss:*

I, Philip A. Hoyne, a commissioner appointed by the Circuit Court of the United States, and for the northern district of Illinois, in the eighth circuit, under and by virtue of the acts of Congress, do hereby certify that the reason for taking the foregoing deposition and the fact is, that the said deposition was taken by the consent of the counsel for the parties hereto.

I further certify, that notification of the time and place of taking said deposition was made out.

I further certify, that on the first day of December, A. D. 1865, I was attended by Goodwin, Larned & Goodwin, of counsel with the said plaintiff, and by , of counsel with the said defendant, and by the witnesses who were of sound mind and lawful age, and the witness having been by me carefully examined and cautioned, and sworn to testify the whole truth, the depositions were by me reduced to writing in the presence of the witnesses, who subscribed the same in my presence, and I have retained the said
181 deposition in my possession for the purpose of transmitting the same by hand to the court for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof, I have subscribed my name and affixed my seal this 24th day of May, A. D. 1866.

[SEAL.] P. A. HOYNE,
U. S. Commissioner, Northern District of Illinois.

[5 ct. U. S. rev. stamp]

Endorsed.—"Filed May 24, 1866. Wm. H. Bradley, cl'k."

182 1*st. drawing.—Complainant's Exhibit "C," Nov.* 29, 1865, *P. W. Hoyne, U. S. Comm.*

The U. States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissued letters patent granted F. F. Fowler, Sept. 9th, 1862, No. 1341.

In testimony whereof, I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-third day of June, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

[SEAL.] D. P. HOLLOWAY.

183 *Reissue, No.* 1341.

The United States of America, to all to whom these letters patent shall come:

Whereas F. F. Fowler, of Crane township, Ohio, has alleged that he has invented a new and useful improvement in bay elevators, (for which letters patent were issued to him, dated April 17, 1860, which letters having been surrendered by him, the same have been cancelled and new letters ordered to issue to him on an amended specification,) which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not to the best of his knowledge and belief been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and

presented a petition to the Commissioner of Patents signifying
184 a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said F. F. Fowler, his heirs, administrators, or assigns, for the term of fourteen years from the seventeenth day of April, one thousand eight hundred and sixty, the full and exclusive right and liberty of making, constructing, using, and vending to other to be used, the said improvement, a description whereof is given in the words of the said F. F. Fowler in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington, this ninth day of September, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States of America the eighty-seventh.

[SEAL.] CALEB B. SMITH,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
D. P. HOLLOWAY,
Commissioner of Patents.

185 *The schedule referred to in these letters patent and making part of the same.*

To all whom it may concern:

Be it known that I, F. F. Fowler, of Crane township, in the county of Wyandotte and State of Ohio, have invented certain new and useful improvements in the construction of elevators for hay, &c., and I do hereby declare the following to be a full, clear, and exact description of the same, reference being had to the accompanying drawings making a part of this specification, in which fig. 1 represents a perspective view of the machine as in use.

To make a hay elevator so simple and perfect as to become a regular agricultural implement requires much skill and invention. In the first place it must be cheap and simple; secondly it must be portable, easily placed and stanch enough to endure the work without the use of guys or braces that have to be set, arranged or fastened; thirdly, the base of the elevator must be so broad or long as to interfere with its being brought up close to its work.

186 The object of my invention was to embrace all these desirable qualities in one apparatus, and this I believe I have effectually done.

My invention consists: First in the combination of the permanent pyramidal supporting frames, and the revolving or turning cross-bar and its braces, with a central supporting piece for steadying and allowing the cross-bar and its braces to turn freely upon the supporting frame.

And it further consists in combining with the cross-bars revolving upon an under supporting frame the so arranging of the hoisting tackle as that the weight to be raised shall be upon one end of the cross-bar, so that a small structure may be used that can be conveniently transported or moved will occupy but little space an be sufficiently stanch, without the addition of guys or braces that require fastening or adjusting.

And it further consists in the construction of elevators for hay, of two pyramidal frames, one placed upon the other, the under frame being upright, and the upper one inverted, the apices of both so united as that the upper frame may freely turn upon whilst it is supported by the lower frame.

187 To enable others skilled in the art to make and use my invention, I will proceed to describe the same with reference to the drawing.

If the base A of the elevator could be made large enough the structure would stand without liability to topple over, or if guys or extra braces were used the structure could be made rigid by them, but a large base prevents the machine from being readily and closely moved up to its work, and also prevents the hay from being brought up close to the machine, so that that feature is quite objectionable.

To use extra guys or braces from the top of the structure would not only interfere with the free turning of the cross-bar but the trouble of unfastening them every time the structure had to be moved would prevent the general use of the machine.

To get, therefore, a small base and obviate the use of guys or braces, I so rig the hoisting tackle as to make it subserve the purpose of guys or braces, and so equalize the load upon the structure as to make it abundantly rigid without any other support than its permanent support on its base.

188 From the base A rise the braces B, which point to a common centre; their upper ends being framed into or secured to a head-block C, and a post D centrally placed between the braces may rise up to or through said head-block, which post may be additionally braced at E F; these pieces B, C, D, E, and F, together, form a pyramidal frame supported by and resting upon the base A.

G is a cross-bar projecting both ways from the central support or post D, and sufficiently far to admit of the hay being easily caught upon the fork, and raised up or transferred to the stack. From this cross-bar braces H H incline inward to, and are secured to a head-block I, that rests upon the head-block C, or upon a shoulder formed upon the central support D, or partially upon both, but so that the cross-bar and its braces may freely turn thereon when necessary to do so. The pieces G H H and I form a second pyramidal frame, but inverted and its apex I rests upon or is so connected with the apex C of the lower pyramidal frame through the central support D as to allow the upper frame to freely turn on whilst it is supported

189 and guided by the lower frame.

Shears *a a* are placed in or on the ends of the cross-bar *g*, over which the rope *b* is reefed, one end of said rope passing around

a sheave c in a block *d* that is forked to the base A at any convenient point, and to this end of the rope the team or power to raise the hay is connected or attached. To the other end of the rope *a* is connected by chains or ropes *e* a fork *f*, having a series of prongs or teeth *g* slightly curved, upon which the hay to be elevated is supported. To the handle *h* of the fork is attached a line *i*, which the attendants holds in his hands whilst the hay is being elevated, allowing it to slip through his hands, under suitable restraint until the hay is to be dropped from the fork, when he releases or lets go the line *i*, and the fork will then draw out of the hay or other thing being stacked or housed.

By thus suspending the weight to be raised at one end of the cross-bar and applying the power to raise that weight at the opposite end of the cross-bar, the tendency of either to topple over the hoisting apparatus is counteracted by the other; the weight and the
190 power being about equal. Any tendency of the cross-bar G to overbalance is taken by the brace on that side to the head block I, or to the central supporting post where it is counteracted, and thus by a comparatively small base, and without fastening the apparatus to the ground by guys, braces, or anchors, it is sufficiently rigid and firm to resist any overturning, whilst from its lightness and portability it is with ease moved from place to place as may be required. The strength of the under frame is concentrated in its head block or apex C. The tendency of the cross-beam G to overbalance is sustained by its head-block or apex I, and thus both the strength and the strain come upon each other at a central point, where it is easily poised or disseminated.

The machine may be placed on wheels or runners for the purpose of easily moving it from place to place, and two or more stacks may be built without changing its position, as the cross-beam can be swung around a full circle, and take up and deliver the hay at any point within its circuit of motion.

191 Having thus fully described the nature and object of my invention, what I claim therein as new, and desire to secure by Letters Patent is—

First, in the construction of elevators for hay, the combination of the permanent pyramidal supporting frame and the revolving cross-bar and its braces to turn upon the supporting frame substantially in the manner and for the purpose described.

I also claim in the construction of elevators for hay, in combination with the cross-bar revolving upon an under supporting frame, the so arranging of sheaves and hoisting tackle as that the weight to be raised shall be upon one end of the cross-bar, whilst the power to raise the weight is applied to the opposite end of the cross-bar, for the purpose of enabling me to use a small and compact structure that may be easily transported or moved, occupying but little space, and sufficiently rigid within itself without the use of additional guys, braces, or other fastenings, as herein described and represented.

192 I also claim in the construction of elevators for hay two pyramidal frames, one placed upon the other, the under frame

being upright, and the upper one inverted, and the head blocks or apices of both so united as that the upper frame may freely turn upon whilst it is supported by the lower frame, substantially in the manner described.

F. F. FOWLER.

Witnesses: W. H. KIRBY.
CUSTUS BERRY, JR.

193 [Here follows drawing, marked page 193.]
194

2nd drawing.—Complainant's Exhibit D., Nov. 29, 1865, P. W. Hoyne U. S. Comm'r.

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted F. F. Fowler, April 17th, 1860, No. 27899.

In testimony whereof, I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-fourth day of June, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

[SEAL.] D. P. HOLLOWAY.

195 No. 27899.

The United States of America to all to whom these letters patents shall come:

Whereas F. F. Fowler, of Crane township, Ohio, has alleged that he has invented a new and useful improvement in elevators for hay, &c., which he states has not been known or used before his application; has made oath that he is a citizen of the United States, that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said F. F. Fowler, his heirs, administrators or assigns, for the term of fourteen years, from the seventeenth day of April, one thousand eight
196 hundred and sixty, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said improvement, a description whereof is given in the words of the said F. F. Fowler in the schedule hereunto annexed and is made part of these presents.

In testimony whereof, I have caused these letters to be made

patent and the seal of the Patent Office has been hereunto affixed. Given under my hand at the city of Washington, this seventeenth day of April, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States of America the eighty-fourth.

[L. S.] JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
PHILIP F. THOMAS,
Commissioner of Patents.

197 *The schedule referred to in these letters patent, and making part of the same.*

To all whom it may concern:

Be it known, that I, F. F. Fowler, of Crane township, in the county of Wyandott, and State of Ohio, have invented a new and useful improvement in elevators for hay, and other purposes; and I do hereby declare that the following is a full, clear and exact description of the same, reference being had to the annexed drawing, forming part of this specification, in the several figures of which similar characters of reference denote the same part.

Fig. 1 is a perspective view of the elevator.

Fig. 2 is a vertical section on line X X. This invention has for its object elevating the hay on the stack in forming the stack; and its nature consists in having a platform which may be placed on wheels or runners if desired, to convey it from place to place. In the
198 centre of the platform is a shaft or pole supported by four braces, running from the corners of the platform to a head-block, at about three-fourths the lengths of the shaft, the shaft extending through the head-blocks, and there is a cross-bar braced to a block having a hole through which the shaft passes so as to allow this block to rest on the head-block; the shaft also passing through the bar so as to allow the bar to revolve on it. On this cross-bar are two sliding arms which are adjustable by bolts passing through slats in them and through the cross-bar. At each end of these arms is a pulley over which passes a rope, having a hay fork attached to one end, and the other end passes down and over another pulley on the platform, and is attached to the horse, so as to raise the fork and hay. There is also a cord to end of the fork handle, which is held by a person below, so as to keep the weight of the hay from turning over the fork.

In the drawing A is the platform, S the shaft, supported by braces *b b*, B the head-block, D the revolving cross-bar, connected by braces *b'* with block *d'*, *a a* the adjustable arms, P their
199 pulleys, *c* the rope passing over them. P' the pulley on the platform, F the fork, and *c* the cord to the handle of the fork. The fork is filled with hay, and the horse being attached to the other end of rope *c*, the fork is drawn up to the stack by the

cord passing over pulleys P, and as soon as the cord c′ is released, the weight of the hay overturns the fork and throws the hay on the stack. After one stack is made by turning around the cross-bar D, another stack can be formed, and by drawing out the sliding arms *a*, still another row of stacks can be made, there volving cross-bar allowing as many stacks as desired to be made without moving the machine. I claim the revolving cross-bar D, constructed as described, with its adjustable arms *a*, and pulleys P, in combination with shaft S, platform A, fork F, ropes *c*, and *c*′, and pulley P′, operating substantially as and for the purposes set forth.

In testimony whereof, I have hereunto signed my name before two subscribing witnesses.

F. F. FOWLER.

Witnesses:
W. T. WILSON.
A. W. BRINKERHOFF.

200 [Here follows drawing, marked page 200.]

201 3*d drawing.*—*Complainant's Exhibit E, Nov.* 29, 1865.

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the file, wrapper, and contents and drawing in the matter of the letters patent granted F. F. Fowler, April 17, 1860, No. 27899.

In testimony whereof, I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fourteenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

[SEAL.] D. P. HOLLOWAY.

202 59-5.—No. 27899.—F. F. Fowler, of Crane township, county of Wyandott, State of Ohio.

Elevators.

Rec'd, March 31, 1860.
Petition, " " "
Affidavit, " " "
Specification, " " "
2. Drawings, " " "
Model, " " "
Cert. dep.
1. Cash $30, March 31, 1860.
Examined, James S. French, April 5th, '60.
2. Issue Sangert, April 6, 1860.
4. Patented, April 17, 1860.
Recorded Vol. 112, page 570.

E. GEO. PATTEN,
Wash'n, D. C.

203 *Petition.*

To the Commissioner of Patents:

The petition of F. F. Fowler, of Crane township, in the county of Wyandot, and State of Ohio, respectfully represents, that your petitioner has invented a new and useful improvement in elevators for hay and other purposes, which he truly believes has not been known or used prior to the invention thereof by your petitioner.

He therefore prays that letters patent of the United States may be granted to him therefore, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided; he having paid thirty dollars into the treasury and complied with other provisions of the said act.

He further prays that George Patten may be recognized as his attorney in presenting this application, altering or withdrawing the same, as the case may require, and to receive the patent when granted.

F. F. FOWLER.

204 *Specification.*

To all whom it may concern:

Be it known that I, F. F. Fowler, of Crane township, in the county of Wyandot, and State of Ohio, have invented a new and useful improvement in elevators for hay and other purposes; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the annexed drawing, forming part of this specification; in the several figures of which similar characters of reference denote the same part.

Figure 1 is a perspective view of the elevator.

Figure 2 is a vertical section on line $x\,x$.

This invention has for its object elevating the hay on the stack in forming the stack; and its nature consists in having a platform, which may be placed on wheels or runners, if desired, to convey it from place to place. In the centre of the platform is a shaft or pole supported by four braces running from the corners of the platform
205 to a head-block at about three-fourth the lengths of the shafts, the shaft extending through the head-block. And there is a cross-bar braced to a block, having a hole through which the shaft passes, so as to allow this block to rest on the head-block, the shaft also passing through the bar so as to allow the bar to revolve on it. On this cross-bar are two sliding-arms, which are adjustable by bolts passing through slats in them, and through the cross-bar. At each end of these arms is a pulley, over which passes a rope having a hay-fork attached to one end, and the other end passes down and over another pulley on the platform, and is attached to the horse, so as to raise the fork and hay.

There is also a cord to the end of the fork-handle which is held by a person below so as to keep the weight of the hay from turning over the fork.

In the drawing, A is the platform; S the shaft, supported by braces *b b*; B the head-block; D the revolving cross-bar, connected by braces *b'* with block *d'*; *a a* the adjustable arms; P their pulleys; C the rope passing over them; P' the pulley on the platform; F the fork; and C' the cord to the handle of the fork.

206 The fork is filled with hay, and the horse being attached to the other end of rope C, the fork is drawn up to the stack, by the cord passing over pulleys P, and as soon as the cord C' is released, the weight of the hay overturns the fork, and throws the hay on the stack. After one stack is made by turning around the cross-bar D, another stack can be formed, and by drawing out the sliding-arms *a*, still another row of stacks can be made.

The revolving cross-bar allowing as many stacks as desired to be made without moving the machine.

I claim the revolving cross-bar D, constructed as descbried, with its adjustable arms *a* and pulleys P, in combination with shaft S, platform A, fork F, ropes C and C', and pulleys P', operating substantially as and for the purposes set forth.

In testimony whereof I have hereunto signed my name before two subscribing witnesses.

F. F. FOWLER.

Witnesses:
W. S. WILSON.
A. W. BRINKERHOFF.

207 *Oath.*

COUNTY OF WYANDOT, *State of Ohio, ss*:

On the 4th day of July, 1859, before the subscriber, a justice of the peace, in and for the said county, personally appeared the within named F. F. Fowler, and made solemn oath, that he verily believes himself to be the original and first inventor of the above-described improvement in elevators, and that he does not know or believe that the same was ever before known or used, and that he is a citizen of the United States.

W. F. WILSON,
Justice of the Peace.

208 [Here follows drawing, marked page 208.]

209 *4th drawing.—Complainant's Exhibit B, Nov.* 29, 1865.

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissued letters patent granted F. F. Fowler, February 14th, 1865, No. 1870.

In testimony whereof I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this

twenty-second day of June, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

[SEAL] D. P. HOLLOWAY.

210 *Reissue No.* 1870.

United States of America to all to whom these letters shall come:

Whereas, F. F. Fowler, of Crane township, Ohio, has alleged that he has invented a new and useful improvement in hay elevators, (for which letters patent were issued to him, dated April 17, 1860; the same surrendered, and new letters ordered to him, dated September 9, 1862; which last letters having been surrendered, the same have been cancelled, and new letters ordered to issue to him, on separate amended specifications,) which he states has not been known or used before his application; has made oath that he is a citizens of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States
211 the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose.

These are therefore to grant, according to law, to the said F. F. Fowler, his heirs, administrators or assigns, for the term of fourteen years from the seventeenth day of April, one thousand eight hundred and sixty, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said F. F. Fowler, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this fourteenth day of February, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States of America the eighty-ninth.

J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

[L. S.] D. P. HOLLOWAY,
Commissioner of Patents.

212 *The schedule referred to in these letters patent, and making part of the same.*

To all whom it may concern:

Be it known, that I, F. F. Fowler, of Crane township, county of Wyandotte, State of Ohio, have invented certain new and useful improvements in elevating hay or other similar products; and I do

hereby declare that the following is a full, clear, and exact description of that part of my invention relating to division No. 1—reference being had to the accompanying drawings, making a part of this specification—in which Fig. 1 represents a perspective view of the machine in use.

To make a hay elevator so simple and perfect as to become a regular agricultural implement, requires much skill and invention. In the first place, it must be cheap and simple; and secondly, it must be portable, easily placed, and staunch to endure the work, without the use of guys or stays that have to be set, arranged, or fastened; and thirdly, the base of the elevator must not be so broad or long
213 as to interfere with its being brought up close to its work.

The object of my invention is to embrace all these desirable qualities in an apparatus, and this I believe I have effectually done. My invention consists, first, in the combination of [of] the permanent pyramidal supporting frame, and the revolving or turning cross-bar and its braces, with a central supporting piece for steadying and allowing said cross-bar and its braces to turn freely upon the supporting frame.

And it further consists in combining with said cross-bar, revolving upon an under supporting frame, the so arranging of the hoisting tackle that the weight to be raised shall be upon one end of the cross-bar, whilst the power to raise it is applied to the opposite end of this bar, so that a small structure may be used that can be conveniently transported or moved—that will occupy but little space, and that will be sufficiently staunch, without the addition of guys or braces, which require fastening or adjusting.

And it further consists, in the construction of elevators for hay, of two pyramidal frames, one placed upon the other, the under frame being upright, and the upper one inverted—the apices of both
214 so united that the upper frame my freely turn upon, whilst it is supported by, the lower frame.

To enable others, skilled in the art, to make and use my invention, I will describe its construction and operation:

If the base A of the elevator could be made large enough, the structure would stand, without liability to topple over; or if guys or extra braces were used, the structure could be made rigid by them; but a large brace prevents the machine from being rapidly and closely moved up to its work, and also prevents the hay from being brought up close to the machine; so that that feature is quite objectionable. To use extra guys or braces from the top of the structure would not only interfere with the free turning of the cross-bar, but the trouble of fastening and unfastening them every time the structure had to be moved would prevent the general use of the machine.

Dutch machine liable to this objection.

To get, therefore, a small base, and obviate the use of guys or braces, I so rig the hoisting tackle as to make it subserve the purpose of guys or braces, and so equalize the load upon the structure as to make it abundantly rigid without any other support than its permanent support on the base A.

From the base A rise braces B, which point to a common centre, their upper ends being fastened into or secured to a head-block *b* and a post D, centrally placed between the braces, may rise up to or through said head-block, which post may be additionally braced, as at E F; these pieces B, C, D, and E and F, together, form a pyramidal frame, supported by and resting upon the base A.

G is a cross-bar projecting both ways from the central support or post D, and sufficiently far to admit the hay being easily caught upon the fork and raised up or transferred to the stack. From this cross-bar braces H H incline inward to and are secured to a head-block T that rests upon the head-block C, or upon a shoulder formed upon the central support D, or partially upon both, but so that the cross-bar and its braces may freely turn thereon when necessary to do so. The pieces G, H H and I, form a second pyramidal frame, but inverted, and its apex I rests upon or is so connected with the apex C of the lower pyramidal frame through the central support D, as to allow the upper frame to freely turn on whilst it is supported and guided by the lower frame. Sheavas *a a* are placed in or on the ends of the cross-bar G, over which the rope *b* is reefed, one end of said rope passing a sheave *c*, in a block *d*, that is hooked to the base A at any convenient point, and to this end of the rope the team or power to raise the hay and turn the same around is connected or attached. The other end of the rope *b* is connected by chains or ropes *e* to a fork *f*, having a series of prongs or teeth *g*, slightly curved, upon which the hay to be elevated is supported.

To the handle *h* of the fork a line *i* is attached, which the attendant holds in his hands, under suitable restraint, until the hay is to be dropped from the fork, when he releases or lets go the line *i*, and the fork will then draw out of the hay or other thing being stacked or housed.

By thus suspending the weight to be raised at one end of the cross-bar, and applying the power to raise that weight at the opposite end of this cross-bar, the tendency of either to topple over the hoisting apparatus is counteracted by the other; the weight and the power being about equal. Any tendency of the cross-bar G to overbalance is taken by the brace on that side to the head-block T, or to the central supporting post, where it is counteracted, and thus by a comparatively small base, and without fastening the apparatus to the ground by guys, braces, or anchors, it is sufficiently rigid and firm to resist any overturning; whilst from its lightness and portability it is with ease moved from place to place as may be required.

The strength of the under frame is concentrated in its head block or apex C. The tendency of the cross-beam G to overbalance is sustained by its head-block or apex T, and thus both the strength and the strain come upon each other at a central point, where it is easily poised or disseminated.

The machine may be mounted on wheels or runners for the purpose of easily moving it from one place to another, and two or more

stacks may be built without changing its position, as the cross-beam can be swung around a full circle, and take up and deliver the hay at any point within its circuit of motion.

Having thus fully described the nature and object of my invention, what I claim as new, and desire to secure by letters patent is:

218 1st. In the construction of elevators for hay, the combination of the permanent pyramidal supporting frame and the revolving cross-bar and its braces, with a central supporting piece for allowing the cross-bar and its braces to turn upon the supporting frame, substantially in the manner and for the purposes described.

2nd. In the construction of elevators for hay, I claim in combination with the cross-bar revolving upon an under supporting frame, the so arranging of the sheaves and hoisting tackle that the weight to be raised shall be upon one end of the cross-bar, whilst the power to raise that weight is applied to the opposite end of the cross-bar, for the purpose of enabling me to use a small and compact structure that may be easily transported or moved, occupying but little space, and sufficiently rigid within itself without the use of additional guys, braces, or other fastenings, as herein described.

3rd. In the construction of elevators for hay, I also claim the pyramidal frames, one placed upon the other; the under frame being upright, and the upper one inverted, and the head-blocks
219 or apices of both so united as that the upper frame may freely turn upon, whilst it is supported by the lower frame, substantially as described.

F. F. FOWLER.

Witnesses:

W. H. KIRBY.
A. W. BRINKERHOFF.

[Here follows drawing, marked page 219.]

220 *Complainant's Exhibit "A."*

The U. States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissued letters patent granted F. F. Fowler, February 14th, 1865, No. 1869.

In testimony whereof I, D. P. Holloway, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-second day of June, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

[SEAL.] D. P. HOLLOWAY.

221 *Reissue No.* 1869.

The United States of America to all to whom these letters patent shall come:

Whereas F. F. Fowler, of Crane township, Ohio, has alleged that he has invented a new and useful improvement in hay elevators, (for which letters patent were issued to him April 17, 1860, the same surrendered, and new letters ordered to issue to him, dated September 9, 1862, which last letters having been surrendered, the same have been canceled, and new letters ordered to issue to him on two separate amended specifications,) which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a
222 patent may be granted for that purpose.

These are therefore to grant, according to law, to the said F. F. Fowler, his heirs, administrators, or assigns, for the term of fourteen years from the seventeenth day of April, one thousand eight hundred and sixty, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said improvement, a description whereof is given in the words of the said F. F. Fowler in the schedule hereunto annexed, and is made part of of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this fourteenth day of February, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States of America the eighty-ninth.

J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

D. P. HOLLOWAY,
Commissioner of Patents.

223 *The schedule referred to in these letters patent and making part of the same.*

To all whom it may concern:

Be it known that I, F. F. Fowler, of Crane township, county of Wyandotte, and State of Ohio, have invented certain new and useful improvements in elevating hay, and other like products, and I do hereby declare that the following is a full, clear, and exact description of that part of my invention which relates to division No. 2,

reference being had to the accompanying drawings, making a part of this specification, in which figure 1 represents a perspective view of the machine in use.

This invention relates to a contrivance which is especially adapted for use on farms for the purpose of facilitating the stacking of hay and other similar products, by admitting of the use of a horse to perform the most laborious part of the work. By my invention I obtain a "labor-saving machine," which can be readily moved about from one place to another, and which will enable a person to stack hay in localities where such work would otherwise be
224 exceedingly inconvenient and laborious. I so construct a machine, for the above-mentioned purpose, that the same power which is employed to elevate a load of hay will also convey the load over the stack in a position to allow the attendant to deposite it thereon; and while this is the case, I also provide for gathering the hay at any side of the machine, and depositing it upon a stack, or erecting a stack at any other side of the machine, all as will be hereinafter described.

To enable others skilled in the art to make and use my invention, I will proceed to describe one form of machine, by which my invention may be carried into effect. In the accompanying drawings A represents a platform or base, which should be made of sufficient area to give steadiness and solidity to sustain the superstructure for elevating and moving the load of hay to be placed upon the stack. In the centre of this basis A is erected a perpendicular post D, which is stayed or braced in a rigid position by the inclined stays B B, which are carried up to a point which is near the upper end of said post D.

G represents a horizontal jib or beam, which is pivoted in any
225 suitable manner to the central post D, so that it will turn completely round this post, or the beam or jib G may be secured rigidly to a central post, which is susceptible of rotating; in this case the beam G may be sustained and strengthened by braces framed into it and to the turning post. But if the beam G turns around a fixed post, as I have represented, braces HH and collar I may be employed. At or near the extreme ends of the beam G are sheaves *a a*, over which pass a rope or chain *b*, to one end of which is attached a fork *h*, having a guy rope *i*, attached to its handle as represented in figure 1. This hay fork is constructed with tines *g*, and ballanced by the bail *e*, which is connected at its ends to the ends of the fork head. This bail is the fulcrum of suspension of the fork, the tines being one arm of the lever, and the handle the other; thus the weight of the hay on the tines can be counterbalanced by the power applied to the handle by the attendant who holds the guy rope *i*, during the operation of elevating a load, as will be further described. The opposite end of the rope *b* is carried down
226 and passed through the pulley block *d*, and to this end of this rope a horse may be attached for elevating the hay which is gathered on the fork at the opposite end of the rope.

The operation of my machine is as follows: The stack is built at one side of the pitcher, and the pulley-block or sheave *d*, on the

base A, is attached at or near the centre of the opposite side of the machine, and the hay to be elevated is deposited at either end of the pitcher. In the operation of elevating the hay the man who handles the fork draws upon it until the cross top beam swings around and occupies a position parallel with the stack or rick, (and at right angles to the line of draft, or at any required angle;) he then plunges his fork into the hay, speaks to the horse to move on, steps back from the hay and holds the guy rope *i* in his hand, and keeps it sufficiently tight to keep the load off the side of the stack, and the beam or jib G in the same position occupied by it when the draft was applied. When the load is sufficiently elevated to pass freely over the stack the person holding the guy rope *i* slackens his
227 hold on it, and allows the beam G, with its loaded fork, to swing around in a line with a line of draft, thus bringing the load over the stack, upon which it is now dropped by the operator releasing the rope *i*. The operator can hold the beam G until the load of hay is elevated perpendicularly to a sufficient height to pass over the stack, or he can let the load of hay move towards the stack as it is being elevated. In either case the horse or power applied to elevate the load also moves it from the point where the fork receives it to the point where it is discharged. It will be seen that during the operation of elevating a load of hay, which has been gathered on the tines of the fork, the operator gradually resists the tendency of the beam G to assume a position in a line with the draft. In other words, he pulls against the horse insofar as to enable him to control the movement of said beam, but not to prevent the load from being elevated. The operator can control the movements of the beam G, so long as he retains his hold on the guy rope *i;* and when a load has been deposited upon a stack he moves the beam G back again, and at the same time takes up the slack rope as the horse backs, so as to get hold of the fork to reload it.

228 In carrying out my invention the crane, or contrivance for elevating the load upon a stack, may be mounted upon wheels or rollers, to facilitate its portability; but for light structures the wheels may be dispensed with.

I have described the ordinary form of hand fork in order to show that such a fork may be conveniently used in conjunction with the supporting and elevating contrivances; but I do not desire to confine my invention to such a fork, as others of a different construction may be used, if desired.

By my invention it will be seen that the attendant can build up a stack of hay or other like products without much expenditure of labor on his part, the horse being compelled to do the greater part of the work. The beam which sustains the load, while it is being elevated, also serves as a lever to enable the horse, or power applied to elevate this load, to move the load to the position for dropping it, without the horse stopping or changing the line of draft. The tendency of the beam G during the operation of elevating a load is to assume a position in a line with a line of draft, from which it
229 was moved at the commencement of the operation, to load the

fork. Having thus described my invention, what I claim as new and desire to secure by letters patent is—

1st. So constructing a machine for elevating hay or other like products, that the same power employed in elevating said products will also revolve the top of the machine, while the load is being elevated, or when high enough to pass over the top of the stack, and so that it may be raised from either or any side of the machine, and deposited on the stack at any other side, and wherever desired, substantially as described.

2nd. An elevator or crane, (when constructed as herein described,) in combination with a device for grasping hay or other like product, and depositing it upon a stack, substantially as described.

F. F. FOWLER.

Witnesses:
M. H. KERBY.
A. W. BRINKERHOFF.
H. G.

230

231 [Here follows map, marked page 231.]

232 *Copy of patent referred to in def'ts' answer as Schedule "A," and drawing.*

No. 45445.

The United States of America to all whom these letters patent shall come:

Whereas Seth Turner, of Onarga, Illinois, has alleged that he has invented a new and useful improved derrick, which he states has not been known or used before his application, has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discover of the said invention, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said invention, and praying that a patent may be granted for that purpose:

These are, therefore, to grant according to law to said Seth Turner, his heirs, administrators, or assigns, for the term of seventeen years from the thirteenth day of December, one thousand eight hundred and sixty-four, the full and exclusive right and liberty
233 of making, constructing, using, and vending to others to be used, the said invention, a description whereof is given in the words of the said Seth Turner in the schedule hereunto annexed, and and is made a part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand at the city of Washington this thirteenth

day of December, in the year of our Lord one thousand eight hundred and sixty-four, and in the independence of the United States of America the eighty-ninth.

J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
[SEAL.] JOHN L. HAYS,
Act'g Commissioner of Patents.

234 *The schedule referred to in these letters patent and making part of the same.*

To all whom it may concern:

Be it known that I, Seth Turner, of Onargo, in the county of Iroquois and State of Illinois, have invented a new and improved derrick for elevating hay, grain, etc., for loading, stacking, or mowing the same; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawing forming part of this specification. The drawing represents a perspective view of my invention.

This inventien relates to a new and improved derrick arranged in in such a manner that it may revolve, and provided with a fork, tackle, spring, and guide, as hereinafter fully set forth, whereby the hay or grain may be elevated to any desired height and then swung around over the stack, rick, cart, or mow, and discharged, and
236 the empty fork then lowered to be again loaded, elevated, and discharged.

A represents a framing constructed in any proper manner, to ensure strength with lightness, and B is a shaft which is placed vertically in the framing A, its lower end being stepped in a cross-piece, *a*, at the bottom of the framing, the shaft being allowed to rotate freely in the latter. At the lower end of the shaft B there is a metal ferrule, C, which is notched at suitable and equal distances apart, as shown at *a*, and D is a rod which is fitted in guides *b* on the cross-piece *a*, and has a spiral spring, E, upon it, said spring having a tendency to keep the rod D pressed towards the ferrule C. The rod D has a cord, F, attached to it. To the upper end of the shaft B there is attached an oblique or inclined rod, G, which is braced by a bar, H; and I is a rope which runs through a sheave or pulley at the outer end of G, said rope passing through the outer end of the adjustable arm J, on the top of the framing A, and through a guide *e*, on the cross-piece *a*, near the lower end of shaft B. The arm
235 J is slotted longitudinally, as shown *f*, and a bolt, *g*, passes through the slot *f* into the framing. This mode of attachment admits of the arm J being turned or adjusted either to the right or left, and also of being vertically lengthened or shortened as may be required. The rope I has a fork at its end; any of the approved horse hay-forks may be employed. This fork after being loaded is

elevated by a horse attached to the opposite end of the rope I; and when the fork is elevated to the desired height, the operator pulls the cord F, which causes the rod D to be drawn out from one of the notches *a* in the ferrule C, and the loaded fork is swung around over the stack, rick, cart, or mow; and the horse being stopped the operator pulls the trip cord of the fork, and the hay or grain is discharged. The horse is then backed, the shaft turns back to the original position by pulling on the trip cord, the rod D being forced by the spring E into a notch, *a** of C, to prevent shaft B from turning; the fork then lowered and the operation repeated. The arm J is ad-
237 justed relatively with the shaft B, and the place where the hay or grain is to be discharged, so as to prevent the shaft being turned more than the required distance each time the fork is swung around over the place where the load is to be discharged, and by lengthening or shortening the arm J the speed of the turning of shaft B for that purpose may be varied as desired.

I claim as new, and desire to secure by letters patent, the rotating shaft B, provided with the oblique arm G, and fitted into the framing A, as shown in combination with the adjustable arm J, and the rod or catch D and the notched ferrule C, or their equivalents for securing the shaft B, all arranged and used in connection with a horse hay fork and tackle, substantially as and for the purpose set forth.

SETH TURNER.

Witnesses:
R. H. HENGERFORD.
M. H. MESSER.

[Here follows drawing, marked page 237.]

238 And on this day, to wit, the second day of July, A. D. 1867, came the said defendants and filed in the said clerk's office their appeal bond in the said entitled cause, which said appeal bond is in the words and figures following, to wit:

Cir't C't U. S., nor. dis. Ill.

Appeal bond.

FINLEY F. FOWLER
vs.
JAMES D. BENNETT and SETH TURNER. } In chancery.

SUPREME COURT OF THE UNITED STATES:

Know all men by these presents, that we, James D. Bennett, Seth Turner, C. L. Whitcomb, and John H. Daniels, are held and firmly bound unto Finley F. Fowler in the sum of twenty-five hundred dollars, to be paid unto the said Finley Fowler, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated—

Whereas the above-named James D. Bennett and Seth Turner have prosecuted an appeal to the Supreme Court of the United
239 States to reverse the judgment rendered in the above-entitled suit by the Supreme Court of the United States:

Now, therefore, the conditions of this obligation is such that if the above-named James D. Bennett and Seth Turner shall prosecute their said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.] J. D. BENNETT.
[SEAL.]
[SEAL.] C. L. WHITCOMB.
[SEAL.] JOHN H. DANIELS.

Signed and sealed in presence of—
JAMES L. YOUNG.
CHICAGO, ILL., *June 29th*, 1867.

STATE OF ILL., *Wilmington, County of Will*:

Before me, a notary public within said county, personally appeared John H. Daniels and made solemn oath that he is worth at least
240 twenty thousand dollars above all indebtedness or liabilities.

JOHN H. DANIELS.

Subscribed and sworn to before me this 1st day of July, A. D. 1867.

Attest, the seal notorial.

[SEAL.] JAMES L. YOUNG, *N. P.*

[5-ct. U. S. rev. stamp.]

Endorsed: "Approved: Thomas Drummond." "Filed July 2d, 1867. Wm. H. Bradley, cl'k."

241 *Northern District of Illinois, ss*:

I, William H. Bradley, clerk of the Circuit Court of the United States for said district, do hereby cetrify the above and foregoing to be a true, correct and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein Finley F. Fowler is the complainant, and James D. Bennett and Seth Turner are the defendants, as the same appears of record remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said Circuit Court at my office in Chicago, in said district, this thirtieth day of November, A. D. eighteen hundred and sixty-seven, and of our independence the ninety-second year.

WM. H. BRADLEY, *Clerk.*

[5-cent rev. stamp.]

242-243

Supreme Court of the United States.

FINLEY F. FOWLER,

Appellee,

ads.

JAMES D. BENNETT AND SETH TURNER,

Appellants.

BRIEF AND POINTS FOR APPELLEE,

BY

S. A. GOODWIN.

CHICAGO:

OAKLEY & SON, LAW PRINTERS, 45 MCCORMICK'S BUILDING,

1869.

Supreme Court of the United States.

FINLEY F. FOWLER, APPELLEE,

ads.

JAMES D. BENNETT & SETH TURNER, APPELLANTS.

BRIEF AND POINTS FOR APPELLEE.

This case comes up on a Bill filed in the Northern District of Illinois, for an account and injunction upon an alleged infringement of two re-issued patents to Fowler, the complainant, bearing date February 14, 1865.

The defendants appeared and answered, but offered no proof to sustain their answer. On the 13th of June, 1866, an interlocutory decree was entered, adjudging an infringement on the complainant's proofs, and for a reference and perpetual injunction. (See Record, fol. 71.) The defendants also appeared on the reference. On the 8th of November, 1866, the Master reported due the complainant $1,860. The defendants filed a single exception, (fol. 133), and on the 19th of June, 1867, a decree for the complainant was entered, (fol. 157), reducing the amount due to the sum of $1,500, from which decree the defendants have appealed.

I

The complainant's prima facie case, upon his patents, is clear and undisputed.

1. The patents are found in two divisions, exhibits B and A, numbered 1870 and 1869, (pages 72 to 80 of the record), and for perspicuity we submit the following statement and analysis of Mr. Fowler's claims, viz:

DIVISION 1, No. 1870.

First Claim:—In the construction of elevators for hay, the combination of the permanent pyramidal supporting frame, and the revolving cross-bar, and its braces, with a central supporting piece *for allowing the cross-bar, and its braces, to turn upon the supporting frame, substantially in the manner, and for the purposes described.*

Second Claim:—In the construction of elevators for hay, I claim, in combination with the cross-bar revolving upon an under supporting frame, the so arranging of the sheaves, and hoisting tackle, that the weight to be raised shall be upon one end of the cross-bar, whilst the power to raise that weight is applied to the opposite end of the cross-bar, *for the purpose of enabling me to use a small and compact structure that may be easily transported, or moved, occupying but little space, and sufficiently rigid within itself, without the use of additional guys, braces, or other fastenings, as herein described.*

Third Claim:—In the construction of elevators for hay, I also claim two pyramidal frames, one placed upon the other, the under frame being upright, and the upper inverted, and the head blocks, or *apices* of both, *so united* as *that the upper frame may freely turn upon, whilst it is supported by the lower frame, substantially as described.*

DIVISION 2, No. 1869.

First Claim:—So constructing a machine for elevating hay or other like products, that the *same power employed in elevating said products, will also revolve the top of the machine while the load is being elevated, or when high enough to pass over the top of the stack, and so that it may be raised from either, or any side of the machine, and deposited on the stack at any other side, and wherever desired, substantially as described.*

Second Claim:—An elevator, or crane (when constructed as herein described) in combination with a device *for grasping hay, or other like products, and depositing it upon a stack substantially as described.*

Mr. Fowler's invention clearly does not lie in any particular *form* given, as in the case of Winans *vs.* Denmead, 15 How., 343. For, although he uses the terms "upper and lower PYRAMIDAL frames," yet in fact they are (especially the upper one) merely resembling a Pyramid. The invention does not stand upon this particular *form*, but upon the arrangement of the peculiar instrumentalities set forth and described, having reference to their construction to produce certain results.

The whole principle is involved in the language of this Court, in Winans *vs.* Denmead, viz:

"When form and substance are inseparable, it is enough to "look at the *form* only. When they are separable; where the "whole substance of the invention may be copied in a different "form, it is the duty of Courts and juries to look through "the form for the substance of the invention—for that which "entitled the inventor to his patent, and which the patent "was designed to secure; where that is found, there is an in-"fringement; and it is not a defence, that it is embodied in a "form not described, and in terms claimed by the patentee."

The contrivances and arrangements by which Fowler's complete machine is reached, in other words, his actual invention, on an examination of his specifications and claims, will be found, on a fair construction, to be this—it consists of four elements, or instrumentalities, in the structure of the machine, centering in one purpose, viz: a Hay Stacking Machine, as an agricultural implement, staunch, light and portable—each operating in the structure described, in the way described, and for the purposes described. In the combination of this structure, or machine, with another, is a fifth element, or instrumentality, and in the power applied to operate the whole combination, a sixth.

The four elements, or instrumentalities, in the structure are:

First. A self-supporting base, or frame, called Pyramidal in form, as distinguished, and distinct from a standard, or centre post.

Second. A centre piece, or post supported in, or by the base frame.

Third. An upper revolving frame, called also Pyramidal in form.

Fourth. A rope and sheaves, so arranged as to operate the machine in the manner described.

Fifth. In the final combination, a device for grasping hay, or other like products—in this case a fork.

Sixth. In operation, the power applied outside of the machine.

The patents in this case establish that Fowler was the first to invent a machine for the objects and purposes stated, as an independent agricultural implement.

He was the first—in the class of machines called derricks—to invent a separate and distinct base, or Pyramidal frame, extending up and supporting the post in position, and being of itself a frame complete without the post.

He was the first to construct a centre post independent, or disconnected, from this base frame.

He was the first to arrange the cord and sheaves, so as to revolve the upper frame by the same power that raises the weight, with self-poising effects in the whole machine, when the power is applied outside of the machine, a necessity in the machine described, for stacking hay.

He was the first to combine these instrumentalities in a structure, in the manner described, and for the purposes set forth.

Lastly, he was the first to combine that structure with a grasping device, forming a perfected machine, producing new and useful results.

The claims of Mr. Fowler will be so construed as to give him his actual invention thus arrived at.

Thus in Division No. 1, Re-issue No. 1870, we find included, o-wit:

First Claim.—In combination, the lower supporting frame, the central supporting post, and the upper revolving frame, for the purposes set forth in the claim, in such a machine.

Second Claim.—In combination, the upper revolving frame, the lower supporting frame, the central suporting post, and the rope and sheaves, so arranged as to produce the effect, or result set forth in the claim in such a machine.

Third Claim.—In combination, the lower supporting frame, the central supporting post, the upper revolving frame, and the rope and sheaves, united in the mode described for the purposes set forth in the claim, in such a machine.

In Division No. 2, Re-issue No. 1869, we find included, to wit:

First Claim.—In combination, the parts of the structure described, *necessary* to effect the new result claimed, viz: the upper revolving frame, the lower supporting frame, the central supporting post, and a rope and sheaves, so arranged that the same power that raises the load will revolve the upper frame, and deposit the load on either side of the machine, at will.

Second Claim.—The structure described for elevating hay, viz: a machine with the lower supporting frame, the upper revolving frame, the central supporting post, combined and united as described, with a rope and sheaves arranged, and operating substantially as described, to attain either of the purposes set forth, *in combination* with a fork, as a device for grasping hay, for the purposes set forth, and in such a machine.

This analysis is made on general principles of construction and upon the principles specially laid down in Silsby *vs.* Foote, 14 How., 218, and Howe *vs.* Morton, 1 Fisher's Pat. Cases, 589, that the parts necessary to the result claimed, are alone to be considered in the combination; and the case of Forbush *vs.* Cook, 2 Fisher's Pat. Cases, 668:

"That to make a valid claim for a combination, it is not necessary that the several elementary parts of the combination should act simultaneously. Nor is it necessary to include in the claim for a combination, as elements thereof, all parts of the machine which are necessary to its action, save as they may be understood as entering into the mode of combining and arranging the elements of the combination."

For this invention, he is entitled to protection, O'Reilley *vs.* Morse, 15 How., 119.

2. The defendant's machine is a clear infringement of the complainant's patents in every particular, and the making and sale of such machines undisputed. A comparison of the models, exhibits F and No. 1, and an examination of the specifications and drawings of Fowler's patents, leaves no room for doubt on this point. They are substantially the same organizations in form and effect.

Nor can the defendants justify under any alleged patent granted to Seth Turner, as set up in the answer. No proof was offered of any such patent, and for the purposes of this case none such exist.

But, if such a patent was in the case, it would not aid the defendant. For the addition of a spiral spring or lever at the bottom of the shaft to control the rotation, as an improvement upon Fowler, would give the patentee no right to use the invention of Fowler.

Curtis on Pat., 3d Ed. § 24.

Crane *vs.* Price, Webster's Pat. Cases, 333, 413.

Foss *vs.* Herbert, 2 Fisher's Pat. Cases, 31.

Tilghman *vs.* Werk, 2 Fisher, 242.

II.

The complainant's patents are re-issues of his original patent of April 17, 1860, (before Re-issued No. 1341, September 9. 1862),—more definitely claiming his actual invention therein described.

1. It is well settled, that either the specification, or the claim of a patentee, may be amended, no matter how often, whenever it is discovered to be necessary to describe the invention more pecisely, or to make the claim cover the whole invention.

O'Reilley *vs.* Morse, 15 How., 112.
Battin *vs.* Taggert, 17 How., 83.

2. The legal presumption is, in all cases, that the Re-issue is for the same invention as the original patent.

Hussey *vs.* McCormick, 1 Fisher's Pat. Cases, 509, McLean, J.
O'Reilley *vs*, Morse, 15 How.,—*supra*.
Stimpson *vs.* W. R. R. Co., 4 How., 380.

In this case, there is nothing to rebut the legal presumption, and it affirmatively appears fully and completely in the patents themselves.

III.

The decree awarding the sum of fifteen hundred dollars as the amount due to the complainant, is fully sustained by the law and the evidence in the case.

1. The defendants filed no objections to the report before the Master; but after the Master's report, came into Court, filed an exception "*to all that part, and so much of the report "as charges these defendants for the acts committed by other "persons than themselves.*"

This being the only exception, all else not excepted to, will be taken as admitted. On the question of the amount due, there is no other point whatever now before this court for consideration.

Story *vs.* Livingston, 13 Peters, 366.

2. The proof on this point before the Master, was by Isaac A. Hawley, (page 31, Record.) It is, that he and his partner have made and sold *fifty-nine* of the machines declared in this case to be an infringement upon Fowler's Patents, under the agreement annexed to his deposition. (Record, fol. 93), by which the defendants warrant and defend Wallingford and Hawley against "any or all damages that they may sustain, &c., for such infringement," to wit: all claims (Fowler's) to a compensation for this infringement of his invention.

3. This is as clearly the act of the defendants as if Wallingford & Hawley were their agents, constructing and selling the machine. The principle is based upon the maxim, "*qui facit*

per alium facit per se," and has been applied in substance in many adjudged cases in this court.

Keplinger *vs.* DeYoung, 10 Wheaton, 358, 363.

Woodworth *vs.* Hall, 1 Woodb. & Min. 248, 251.

Curtis on Patents, 3d Ed. §§ 292, 293.

By the instrument proved, Bennett & Turner, for a valuable consideration, gave Wallingford & Hawley the right to build this Hay Stacker, (the same as exhibit No. 1) specified as the Hay Stacker described in the alleged patent referred to in the agreement, and annexed to the defendant's answer, and indemnified them for so doing as infringers. The authority was acted on and carried out by the manufacture and sale of *fifty-nine* machines. If Wallingford & Hawley were compelled to pay damages for this infringement, Bennett & Turner would be bound to re-imburse them. They are liable to us without this circuity. For the indemnifier is liable in all cases of tortious acts as a principal.

Herring *vs.* Hoppock, 3 Duer, 20.
Root *vs.* Chandler, 10 Wen. 110.
Davis *vs.* New Kirk, 5 Denio, 92.

The doctrine of these cases is fully affirmed by this court in the case of

Lovejoy *vs.* Murray, 3 Wallace, 1, 10.

Upon the principles of that case the appellants here, were, to the extent of the acts under the agreement proved, the principals, and Wallingford & Hawley their agents in the transaction.

4. The proofs before the Master, showed the patentee's established license price to be ten dollars for each machine, with no proof the other way, and following the rule of Seymour *vs.* McCormick, 16 How., 480 that was the true measure of compensation. It was also showed that the defendants had made and sold, or sent out for sale, one hundred and twenty-seven machines at their shop, which, added to the fifty-nine by Wallingford and Hawley, footed one hundred and eighty-six machines, for which, at $10 each, he rendered his report at $1,860. The court on the argument reduced the amount by the sum of $360, (36 machines), and confirmed the report, and entered a decree for the sum of fifteen hundred dollars, (150 machines.)

We submit, that there is no error in this decree, of which the appellants can complain; and that it should be wholly affirmed. But further, we also say, that if the appellants were right in the single exception taken to the Master's report, viz: to the allowance of the fifty-nine machines made by Wallingford and Hawley, it would only result in a modification of the decree by a further deduction of $230 (23 machines), from the amount of the Master's report. And for the balance, $1,270, with interest from the date of the Master's report, we should still be entitled to an affirmance of the decree.

GOODWIN, LARNED & TOWLE,

Solicitors for Appellee.

Supreme Court of the U. S.

No. 209.

JAMES D. BENNETT AND SETH TURNER, Appellants,

vs.

FINLEY F. FOWLER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

SUPREME COURT OF UNITED STATES.

WASHINGTON, D. C.

JAS. D. BENNETT,
SETH TURNER,
Appellees,
vs.
FINLEY F. FOWLER.

From the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT OF LEWIS L. COBURN, COUNSEL FOR APPELLANTS.

May it please your Honors:

This is a cause in which Finley F. Fowler filed his bill of complaint in the court below against James D. Bennett and Seth Turner for infringing two certain re-issued Letters Patent of the United States. The original patent was issued April 17th, 1860, and No. 27,899 for an *Improvement* in Elevators for Hay and other purposes. (See page 71 Transcript of Records.) September 9th, 1862, the said Finley F. Fowled surrendered the said Letters Patent, and new and re-issued Letters Patent of that date were issued to him upon an amended specification for "certain new and useful improvements in the construction of elevators for hay," &c. (See page 65 Transcript of Records.) This re-issued Letters Patent was again surrendered by Finley F. Fowler as being inoperative and void February 14, 1865, and there were issued to him two re-issued Letters Patent with amended specifications, in which he declares that he has "invented

new and useful improvements in elevating hay and other like purposes."

See specifications of re-issued Patents Nos. 1869 and 1870, pages 73 and 77 Transcript of Record.

These last re-issued Letters Patent were obtained after Letters Patent were granted to the appellants, viz., December 13th, 1864.

See page 81 Transcript of Record.

The court below erred in decreeing both of said Letters Patent Nos. 1869 and 1870 valid, and that the said Finley F. Fowler thereby became vested with the exclusive rights therein granted us in said Bill alleged and complained.

The said Letters Patent are not valid for the following reasons:

First. That said re-issued Letters Patent are vague and indefinite; contain descriptions of differently constructed machines, and different results from any described in the original Letters Patent, and were clearly re-issued for the purpose of inserting therein expanded and equivocal claims.

1 Wallace, 531, Burr vs. Duryee.

Second. Although the patentee calls his invention an improvement in elevating hay and other like products, he does not particularly specify and point out the parts, improvements or combinations which he claims as his own, so as to enable the public to know definitely what his claim is.

Curtis on Patents, §§ 227, 229, 230, 232, 233, and 239.
7 Wheaton, 256, 431, Evans *vs.* Eaton.
1 Mass., 182, 188, Lowell *vs.* Lewis.
4 Wash., 9, Kneass *vs.* The Schuylkil Bank.
1 Mass., 447, Barnett *vs.* Hall.
4 Wash., 68, 73, Dixon *vs.* Moyer.
8 Taunt., 375, Hill *vs.* Thompson.

Third. He claims so constructing a machine for elevating hay or other like products that it will produce certain results which said results the machine will not produce.

See 1st claim of Re-issued Patent No. 1861, page 80, Transcript of Record.
Curtis on Patents, § 234-242.
Webs Pat. Cas., 80 Turner *vs.* Winter.
2 Wallace, 320 Case *vs.* Brown.

Fourth. He claims an elevator or crane (when constructed as herein described) in combination with a device for grasping hay or other like products, and depositing it upon a stack, substantially as described.

See 2d claim of Re-issued Patent No. 1869, page 80, Transcript of Record

Query: Would this claim be infringed by attaching a basket of salt to the elevator or crane and elevating it upon the stack to salt the hay. This claim, if it means anything, must mean to cover attaching a fork or other suitable device for elevating hay or other like products to the machine described. When the machine is constructed there can be no inventive ingenuity in attaching to it one device instead of another, especially when they are all attached by simply tying a rope.

Curtis on Patents, par. 32.
4 Wash., 9-11, Kneass *vs.* Schuylkil Bank.

If it is held that the patents are not so ambiguous as to make them void, and that the claims are on the special machine described, then the Court below erred in decreeing the defendant's machine to be an infringement of the patents.

First. Because the change in construction and form is such that the principal result sought in the Fowler machine does not attain, viz: The weight as it is being raised does

not rest upon the top or apex of the lower pyramidal frame, to be distributed therefrom through the four braces to the four corners of the base of the machine, thereby making it self-sustaining, without guys or stays.

Secondly. By causing the weight to rest upon the center-post and having the center-post revolve, which construction is in the Bennett and Turner machine but not in the Fowler machine; the revolving of the machine can be controlled in an entirely different manner, and thereby a new result obtained.

2 Brock. 310, Davis *vs.* Palmer
4 Mass, 1, Earle *vs.* Sawyer.

Even if the Fowler patents are valid and the Appellant's machine an infringement, the Court erred in allowing damages against the Appellants for machines manufactured by Hawley and Wallingsford; because the patent issued to Turner and sold to Hawley and Wallingsford describes a different machine from the one proved an infringement, and because the conditions of the agreement of Bennett and Turner to indemnify Hawley and Wallingsford never happened.

See Patent issued to Seth Turner, page 81, Transcript of Record;
Also—Hawley's Deposition, page 31;
And—Agreement of Indemnity, page 33.

LEWIS L. COBURN,
Counsel for Appellants.